ANNOTATED

Indian Civil Court Handbook

(As amended upto 1st September, 1936)

BY

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PREFACE TO THE FOURTH EDITION.

I am really thankful to the members of the Bench and the Bar, for the ready reception they have given to the last edition of this book. The book was exhausted within twelve months of its publication. But as I was engaged in other works I could not publish it in the beginning of this year. In this edition, I have made certain important additions. The Civil Procedure Code, with exhaustive annotations, Civil Courts Acts, Letters Patent of different High Courts, the Reserve Bank Act of 1934 and also some other Acts have been added. By these additions nearly 40 p.c. new matters have been inserted. The size of book has been changed from Double Crown 16vo, to Royal 8vo. Although the cost of the production has become nearly double, I have increased the price of the book only by 8 as *with the expectation that it may* reach every lawyer, rich or poor, senior or junior. All the amendments upto 15th September 1934, have been incorporated in the texts of the Acts.

SUPPLEMENT TO BASU'S ANNOTATED

Indian Civil Court Hand Book Vol I.

1. Code of Civil Procedure (Amendment) Act.

(XXI of 1936.)

2. Indian Companies (Amendment) Act

(XXII of 1936.)

THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT.

ACT NO XXI OF 1936.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 27TH OCTOBER, 1936.

An Act further to amend the Code of Civil Procedure, 1908, for certain Purposes.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908,* for the purposes hereinafter appearing ; It is hereby enacted as follows:—

Short title

1. This Act may be called the Code of Civil Procedure (Amendment) Act, 1936.

Notes.—(1) This Act is the outcome of the recommendations of the Royal Commission on Labour in India to the effect that in the case of industrial workers in respect of wages less than Rs 100 a month arrest and imprisonment for debt should be abolished except where the debtor has been proved to be both able and unwilling to pay This Act seeks to amend the Civil Procedure Code 1908, so as to protect honest debtors of all classes. and not the industrial worker class only, from detention in civil prison and to confine such detention to debtors proved to be recalcitrant or fraudulent It also provides *inter alia* that no order for execution by detention inprison shall be issued unless the debtor has been given an opportunity of showing cause why he should not be committed to prison, and the Court is satisfied for reasons recorded in writing that (i) the debtor is likely to leave the local limits of the jurisdiction of the Court, or has after the institution of the suit fraudulently disposed of his property, and (ii) that he is able to pay the amount of the decree otherwise than from the protected assets.

(2) This Act applies to all judgment-debtors "—*Statement of Objects and Reasons.*

Addition of proviso to section 51, Act V of 1908.

2 To section 51 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code), the following proviso shall be added, namely :

"Provided that where the decree is for the payment of money execution by detention in prison shall not be ordered· unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

(*a*) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—

(*i*) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(*ii*) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(*b*) that the judgment debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part

[illegible] ised or neglected to pay the same, or

[illegible] m for which the judgment-debtor was

[illegible]

Explanation—In the calculation of the means of the judgment-debtor for the purposes of clause (*b*), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree."

* V of 1908.

Amendment of rule 37, Order XXI in the First Schedule, Act V of 1908

3. In sub rule (1) of rule 37 of Order XXI in the First Schedule to the said Code, for the word "may" the word "shall" shall be substituted, and to the sub-rule the following proviso shall be added, namely :—

"Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court."

Repeal of rule 40, Order XXI in the First Schedule, Act V of 1908, and insertion of new rule in place thereof.

4. For rule 40 of Order XXI in the First Schedule to the said Code together with any alterations therein or additions thereto made under section 122 of the said Code the following rule shall be substituted, namely :—

Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

"40. (*1*) When a judgment debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(*2*) Pending the conclusion of the inquiry under sub-rule (*1*) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest ;

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release."

THE INDIAN COMPANIES ACT.

ACT NO. XXII OF 1936.

(RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 27TH OCTOBER 1936).

An Act further to amend the Indian Companies Act 1913, for certain purposes.

WHEREAS it is expedient further to amend the Indian Companies Act, 1913,* for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Indian Companies (Amendment) Act, 1936.

* VII of 1913.

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf.

2. (1) Section 2 of the Indian Companies Act, 1913* (hereinafter referred to as the said Act), shall be re-numbered as sub-section (1) of that section and in that section as so re-numbered—

Amendment of section 2, Act VII of 1913.

(*a*) for clause (*9*) the following clauses shall be substituted, namely :—

(*9*) "manager" means a person who, subject to the control and direction of the directors has the management of the whole affairs of a company, and includes a director or any other person occupying the position of a manager by whatever name called and whether under a contract of service or not :

(*9A*) 'managing agent' means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called :" ;

Explanation.—If a person occupying the position of a managing agent calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purposes of this Act.

Notes—The existence of many special provisions applying to managing agents renders it advisable that the terms should be separately defined. *Report of the Select Committee*

(*b*) in clause (*11*), after the word "director" the words "managing agent" shall be inserted.

(*c*) for clause (*13*) the fo[illegible] y :—

"(13) 'private compar[illegible]

(*a*) restricts the right [illegible]

(*b*) limits the number [illegible] s who are in the employment of the company ; and

(*c*) prohibits any invitation to the public to subscribe for the shares, if any, or debentures of the company :

Provided that where two or more persons hold one or more shares in a company jointly they shall for the purposes of this definition, be treated as a single member ."

Notes—[illegible] S. 26 of the English Companies Act of

[illegible] clause shall be inserted, namely :—

[illegible] company incorporated under this Act or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, which is not a private company ;" and

(*e*) to clause (*14*) the following words shall be added, namely :—

"but shall not include any trade advertisement which shows on the face of it that a formal prospectus has been prepared and filed".

(2) To section 2 as so re-numbered the following sub-section shall be added, namely :—

"(2) Where [illegible] t of shares in [illegible] whether that [illegible] and [illegible] of the shares so held is at the time when the accounts of the holding company are made up [illegible] per cent. of the issued [illegible] title the company to [illegible] company, or

[illegible] of 1913

(*b*) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression 'subsidiary company' in this Act means a company in the case of which the conditions of this sub-section are satisfied and includes a subsidiary company of such company :

Provided that where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall, for the purpose of determining under this section whether that other company, is a subsidiary company, be taken of the shares so held."

Notes :—In this sub-section the definition of subsidiary companies is given, which is taken with slight alteration form S 127 of the English Companies Act.

Amendment of section 4, Act VII of 1913.

3. To section 4 of the said Act the following sub-sections shall be added, namely :—

"(3) This section shall not apply to a joint family carrying on joint family trade or business and where two or more such joint families form a partnership, in computing the number of persons for the purposes of this section, minor members of such families shall be excluded.

(4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

(5) Any person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine not exceeding one thousand rupees."

Notes—Subsections 4 and 5 provide the sanction for enforcing observance of the provision of the section. *Vide Notes on Clauses.*

Substitution of new section for section 9, Act VII of 1913

4. For section 9 of the said Act the following section shall be substituted, namely :—

Printing and signature of memorandum.

"9. The memorandum shall—

(*a*) be printed,

(*b*) be divided into paragraphs numbered consecutively, and

(*c*) be signed by each subscriber (who shall add his address and description) in the presence of at least one witness who shall attest the signature."

Notes.—Section 4 of this Amending Act applies to a memorandum the requirements laid down in section 9 of the English Act.

Amendment of section 10, Act VI of 1913.

5. To section 10 of the said Act, the following proviso shall be added, namely :—

"Provided that any provision in the memorandum relating to the appointment of a manager or managing agent and other matters of a like nature incidental or subsidiary to the main objects of the company, shall not be deemed to be such condition."

Notes —*Vide* Ram Kumar Potdar v. Sholapur Spinning, A. I. R. 1934 Bom. 427 =36 Bom. L. R. 907.

Amendment of section 11, Act VII of 1913.

6. For sub-section (3) of section 11 of the said Act the following sub-section shall be substituted, namely :—

"(3) Except with the previous consent in writing of the Governor General in Council, no company shall be registered by a name which—

(a) contains any of the following words, namely, 'Crown' 'Emperor' 'Empire' 'Empress' 'Federal', Imperial', 'King', 'Queen', 'Royal', 'State', 'Reserve Bank'. 'Bank of Bengal', 'Bank of Madras', 'Bank of Bombay', or any word which suggests or is calculated to suggest the patronage of His Majesty or of any member of the Royal Family or any connection with His Majesty's Government or any department thereof ; or

(b) contains the word 'Municipal' or 'Chartered' or any word which suggests or is calculated to suggest connection with any municipality or other local authority or with any society or body incorporated by Royal Charter :

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act."

Amendment of section 12, Act VII of 1913.

7. In sub section (1) of section 12 of the said Act, after clause (e) the following word and clauses shall be added, namely :—

"or

(f) to sell or dispose of the whole or any part of the undertaking of the company ; or

(g) to amalgamate with any other company or body of persons."

Notes :—These clauses were introduced for the first time in the English Companies Act of 1929 and they are now incorporated in the Indian Companies Act.

Amendment of section 17, Act VII of 1913

8. To sub section (2) of section 17 of the said Act the following shall be added, namely :—

"and shall in any event be deemed to contain regulations identical with or to the same effect as regulation 56, regulation 66, regulation 71, regulations 78, 79, 80, 81 and 82, regulation 95, regulation 97, regulation 105, regulation 107 and regulations 112, 113, 114, 115 and 116 contained in that Table :

Provided that regulation 78 shall not be deemed to be included in the articles of any private company except a private company which is the subsidiary company of a public company :

Provided further that regulation 107 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion thereof is charged against the income of the year, shall be shown in the profit and loss account unless the company in general meeting shall determine otherwise."

Notes :—This clause makes the adoption of model regulation on this subject (as to polls, absence of restrictions on form of proxies, retirement of directors by rotation, inspection of accounts, details shown in profit and loss accounts and the giving of notice to members) contained in Table A compulsory—*Vide Notes on Clauses.*

Amendment of section 19, Act VII of 1913.

9. In clause (c) of section 19 of the said Act, after the word "memorandum" the brackets and words "(who shall add his address and description)" shall be inserted.

Insertion of new section 20A in Act VII of 1913.

10. After section 20 of the said Act the following section shall be inserted, namely :—

"20A. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company :

Effect of alteration in memorandum or articles.

Provided that this section shall not apply in any case where the member agrees in writing either before or after the alteration is made to be bound thereby."

Notes—The amendment limits, on the lines of section 22 of the English Act, the liability of a member of a company under alterations made in the memorandum after he has become a member of the company—*Notes on Clauses.*

Amendment of section 25, Act VII of 1913

11. In subsection (*1*) of section 25 of the said Act, for the words "at his request, and" the words "at his request and within fourteen days thereof" shall be substituted.

Insertion of new section 25 A in Act VII of 1913.

12. After section 25 of the said Act the following section shall be inserted, namely :—

"25A. (*1*) Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration *shall be in accordance with the alteration.*

Alteration of memorandum or articles to be noted in every copy.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum or articles which are not in accordance with the alteration, it shall be liable to a fine not exceeding ten rupees for each copy so issued and every officer of the company who is knowingly and wilfully in default shall be liable to the like penalty."

Notes.—Section 25 A follows section 24 of the English Act in providing that the memorandum should show all changes made therein—*Notes on Clauses.*

13. In sub section (3) of section 26 of the said Act, for the words "and of filing lists of members and directors and managers with the registrar" the words "and of sending lists of members to the registrar" shall be substituted.

Amendment of section 26, Act VII of 1913.

Insertion of new section 31A in Act VII of 1913.

14. After section 31 of the said Act the following section shall be inserted, namely :—

"31A. (*1*) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall within fourteen days after the date on which any alteration is made in the register of members make any necessary alteration in the index

Index of members of company.

(*2*) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the accou of that member in the register to be readily found,

(3) If default is made in complying with this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees."

Notes.—It follows s. 96 of the English Act.

Amendment of section 32, Act VII of 1913

15. In section 32 of the said Act,—

(a) in subsection (1), after the word "shall" the words "within eighteen months from its incorporation and thereafter" shall be inserted ;

(b) in sub-section (2),—

(i) in clause (f), for the words "in respect of any debentures" the words "in respect of any shares or debentures" shall be substituted, and to that clause the words "or so much thereof as has not been written off at the date of the return" shall be added ; and

(ii) in clause (l), for the words "the managers of the company" the following words shall be substituted, namely :—

"the managers or managing agents of the company, and the changes in the personnel of the directors, managers and managing agents since the last return together with the dates on which they took place" ;

(c) in sub-section (3) for the words "seven days" the words "twenty-one days" shall be substituted ; and

(d) sub section (4) shall be re-numbered as sub-section (5) and the following sub-section shall be inserted as sub-section (4), namely :—

"(4) A private company shall send with the annual return required by sub section (1) a certificate signed by a director or other officer of the company that the company has not, since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under sub-clause (b) of clause 13 of sub-section (1) of section 2 are not to be included in reckoning the number of fifty".

Substitution of new section for section 34, Act VII of 1913.

16. For section 34 of the said Act the following section shall be substituted, namely :—

Transfer of shares.

"34. (1) An application for the registration of the transfer of shares in a company may be made either by the transferor or the transferee, provided that where such application is made by the transferor no registration shall in the case of partly paid shares be effected unless the company gives notice of the application to the transferee and subject to the provisions of sub-section (4) the company shall, unless objection is made by the transferee within two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.

(2) For the purposes of sub-section (1) notice to the transferee shall be deemed to have been duly given if despatched by prepaid post to the transferee at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post.

(3) It shall be lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip.

Provided that, where it is proved to the satisfaction of the directors of the company that an instrument of transfer signed by the transferor and transferee has been lost, the company may, if the directors think fit, on an application in writing made by the transferee and bearing the stamp, required by an instrument of transfer, register the transfer on such terms as to indemnity as the directors may think fit.

(4) If a company refuses to register the transfer of any shares or debentures, the company shall, within two months from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the rufusal.

(5) If default is made in complying with sub section (4) of this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liabe to a fine not exceeding fifty rupees for every day during which the default continues.

(6) Nothing in sub section (3) shall prejudice any power of the company to register as share-holder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(7) Nothing in this section shall prejudice any power of the company under its articles to refuse to register the transfer of any shares."

Object of the section :—The Act does not lay down the procedure for the transfer of shares and this is generally provided for in the articles of the company. Undue restrictions upon transfers and undue delay in registering transfers are not uncommon. The section now introduced while leaving a discretion with directors to refuse transfer requires for a transfer application either by the transferor or by transferee, notice by the transferee in the case of an application by the transferor, the use of the proper instrument of transfer required by the company in the case of an application by the transferee, and notice within a limited time to a proposed transferee. It also prescribes the time limit within which an objection by a transferee may be made or a refusal to register a transfer must be communicated—*Notes on Clauses.*

Amendment of section 36, Act VII of 1913

17. In section 36 of the said Act,—

(a) (i) in sub section (1), after the word "company" where it first occurs the words 'and the index of members" shall be inserted ;

(ii) to sub-section (1) the words "Any such member or other person may make extracts therefrom" shall be added at the end ;

(b) to sub-section (2) the following words shall be added, namely :—

"and the company shall cause any copy so required by any person to be sent to that person within a period of ten days, exclusive of non-working days and days on which the transfer books of the company are closed, commencing on the day next after the day on which the requirement is received by the company" ; and

(c) for sub-section (3) the following sub-section shall be substituted, namely :—

"(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal or default continues and the Court may by an order compel an immediate inspection of the register and index or direct that copies required shall be sent to the persons requiring them."

Notes :—Refusal means distinct refusal. *Vide Rex* v. *Wells*, 3 Ad. & El. 447.

Amendment of section 37, Act VII of 1913.

18. In section 37 of the said Act,—

(*a*) after the word "giving" the words "seven days' previous" shall be added;

(*b*) for the word "thirty" the word "forty-five" shall be substituted; and

(*c*) the words "but not exceeding thirty days at a time" shall be added at the end.

Amendment of section 39, Act VII of 1913.

19. To section 39 of the said Act the following words shall be added, namely:—

"within a fortnight from the date of the completion of the order".

Amendment of section 43, Act VII of 1913.

20. Section 43 of the said Act shall be re-numbered as sub-section (*1*) of that section and to the section as so re-numbered the following sub-section shall be added, namely:—

"(2) Nothing in this section shall apply to a private company."

Amendment of section 50, Act VII of 1913.

21. In section 50 of the said Act,—

(*a*) in sub-section (2), the words "with respect to sub-division of shares" shall be omitted, and for the words "by special resolution" the words "by the company in general meeting" shall be substituted;

Notes.—This clause brings the law into accord with section 50 of the English Act—*Notes on Clauses.*

(*b*) sub-sections (*3*) and (*4*) shall be omitted and sub-section (*5*) shall be re-numbered as sub-section (3); and

Notes.—We have omitted sub-sections (3) and (4) in view of the new section 25 A—*Report of the Select Committee.*

(*c*) after sub section (5) as so re-numbered the following sub-section shall be added, namely:—

"(*4*) The company shall file with the registrar notice of the exercise of any power referred to in clause (*d*) or clause (*e*) of sub section (1) within fifteen days from the exercise thereof."

Amendment of section 53, Act VII of 1913.

22. In section 53 of the said Act,—

(*a*) in sub-section (1) the words "or in the case of a special resolution the confirmation" shall be omitted;

(*b*) sub-section (*2*) shall be re-numbered as subsection (*3*) and the following sub-section shall be inserted as sub-section (2), namely:—

"(2) The notice to be given as aforesaid shall include particulars of the classes of shares affected and the conditions (if any) subject to which the new shares are to be issued"

Amendment of section 54, Act VII of 1913.

23. In the proviso to sub-section (1) of section 54 of the said Act, the words "and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed" shall be omitted.

Insertion of new section 54A in Act VII of 1913.

24. After the heading "*Reduction of Share Capital*" and before section 55 the following section shall be inserted, namely:—

Restrictions on purchase by company or loans by company for purchase of its own shares.

"54A. (1) No company limited by shares shall have power to buy its own shares or the shares of a public company of which it is a subsidiary company unless the consequent reduction of capital is effected and sanctioned in the manner provided by sections 55 to 66.

(2) No company limited by shares other than a private company, not being a subsidiary company of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company :

Provided that nothing in this section shall be taken to prohibit, where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business.

(3) If a company acts in contravention of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees.

(4) Nothing in this section shall affect the right of a company to redeem any shares issued under section 105B"

Notes.—It follows section 45 of the English Act in forbidding this subterfuge —*Notes on Clauses.*

Amendment of section 55, Act VII of 1913.

25. In section 55 of the said Act,

(*a*) sub-section (*1*) shall be omitted ; and
(*b*) sub section (*2*) and (*3*) shall be re-numbered as sub sections (1) and (2) respectively.

Notes.—Original subsection (1) has been incorporated in s. 54 A and hence the necessity of this amendment.

Amendment of section 56, Act VII of 1913.

26. In section 56 of the said Act, the words "and confirmed" shall be omitted.

Amendment of section 57, Act VII of 1913.

27. In section 57 of the said Act, for the word "confirmation" where it first occurs, the word "passing" shall be substituted and for the words "the presentation of the petition for confirming the reduction" the words "the making of the order confirming the reduction" shall be substituted.

Insertion of new heading and section 66A in Act VII of 1913.

28. After section 66 of the said Act the following heading and section shall be inserted, namely :—

"*Variation of Shareholders' Rights.*

Rights of holders of special classes of shares.

66A. (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holder [illegible] per cent. of the issued shares of that c[illegible] or vote in favour of the resolution for the variation, may apply to the Court t

have the variation cancelled, and where any such application is made the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within fourteen days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) ... Court, after hearing the applicant and any o... to be heard and appear to the Court to b..., if it is satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall within fifteen days after the service on the company of any order made on any such application forward a copy of the order to the registrar and, if default is made in complying with this provision, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.

(6) The expression 'variation' in this section includes 'abrogation' and the expression 'varied' shall be construed accordingly."

Notes :—It reproduces s. 61 of the English Act of 1929, with slight alteration.

Amendment of section 71, Act VII 1913.

29. In section 71 of the said Act,—

(*a*) in sub-section (2) for the word "confirmation" the word "passing" shall be substituted and all the words after the word "memorandum" shall be omitted, and

(*b*) sub section (3) shall be omitted.

Notes :—It is necessary in view of the new s. 25 A.

Substitution of new section for section 72, Act VII of 1913.

30. For section 72 of the said Act the following section shall be substituted, namely :—

Registered office of company.

"72. (1) A company shall as from the day on which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office and of any change therein shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the registrar who shall record the same.

(3) The inclusion in the annual return of a company of the statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this section.

(4) If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.

Notes :—The existing section does not lay down any time within which the registered office is to be set up or notice of its situation or any change of its situation is to be given The section adopts s. 92 of the English Act.—*Notes on Clauses.*

Substitution of new section for section 76, Act VII of 1913.

31. For section 76 of the said Act the following section shall be substituted, namely :—

Annual general meeting

"76. (1) A general meeting of every company shall be held within eighteen months from the date of its incorporation and thereafter once at least in every calendar year and not more than fifteen months after the holding of the last preceeding general meeting.

(2) If default is made in holding a meeting in accordance with the provisions of this section, the company and every director or manager of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees

(3) If default is made as aforesaid, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company".

Notes—This section is taken from s. 112 of the English Companies Act of 1929 with slight alteration.

Substitution of new section for section 77, Act VII of 1913

32. For section 77 of the said Act the following section shall be substituted, namely :—

Statutory meeting of company.

"77. (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2) The directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as the statutory report) certified as required by this section to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company or by the chairman of the directors if authorised in this behalf by the directors and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares alloted, distinguished as aforesaid;

(c) an abstract of the receipts of the Company and of the payments made thereout up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company showing separately any commission or discount paid on the issue or sale of shares;

(d) the names, addresses and descriptions of the directors, auditors, managing agents and managers, if any, and secretary of the company and the changes, if any which have occurred since the date of the incorporation;

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification;

(f) the extent to which underwriting contracts, if any, have been carried out;

(g) the arrears, if any, due on calls from directors, managing agents and managers; and

(h) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, managing agent or manager or a partner of the managing agent if the

managing agent is a firm or if the managing agent is a private company a director thereof.

(4) The statutory report shall, so far as it relates to the shares alloted by the company, and to the cash received in respect of such shares and to the receipts and payments of the company, be certified as correct by the auditors of the company.

(5) The directors shall cause a copy of the statutory report certified as required by this section to be delivered to the registrar for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the memoers of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If a petition is presented to the Court in manner provided by the Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding five hundred rupees.

(11) This section shall not apply to a private company."

Notes.—It follows generally the lines of section 113 of the English Act. It extends the obligation to hold a statutory general meeting to all companies having a share capital. More extended period of time have been extended in the first two sub-sections Further requirements have been added by clauses (f) and (g) of sub-section (3) Provision has also been introduced authorising certificates of the report by the chairman of the board of directors—*Notes on Clauses.*

Amendment of section 78, Act VII of 1913.

33. Sub-section (4) of section 78 of the said Act shall be omitted, sub-section (5) shall be re numbered as sub-section (4) and after sub section (5) as so re-numbered the following sub section shall be added, namely:—

"(5) *Any reesonable expenses* incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default."

Substitution of new section for section 79, Act VII of 1913.

34. For section 79 of the said Act the following section shall be substituted, namely:—

Provisions as to meetings and votes.

"79. (1) The following provisions shall have effect with respect to meetings of a company other than a private company not being a subsidiary of a public company and the procedure thereat, notwithstanding any provision made in the articles of the company in this behalf:—

(*a*) a meeting of a company other than a meeting for the passing of a special resolution may be called by not less than fourteen days' notice in writing; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit;

(*b*) notice of the meeting of a company with a statement of the business to be transacted at the meeting shall be served on every member in the manner in which notices are required to be served by Table A and for the purpose of this clause the expression 'Table A' means that table as for the time being in force; but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting;

(*c*) five members present in person or by proxy, or the chairman of the meeting, or any member or members holding not less than one tenth of the issued capital which carries voting rights shall be entitled to demand a poll: Provided that in the case of a private company if not more than seven members are personally present, one member, and if more that seven members are personally present, two members shall be entitled to demand a poll;

(*d*) an instrument appointing a proxy, if in the form set out in regulation 67 of Table A, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles; and

(*e*) any shareholder whose name is entered in the register of shareholders of the company shall enjoy the same rights and be subject to the same liabilities as all other shareholders of the same class

(2) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:—

(*a*) two or more members holding not less than one-tenth of the total share capital paid up or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting;

(*b*) in the case of a private company two members and in the case of any other company five members personally present shall be a quorum;

(*c*) any member elected by the members present at a meeting may be chairman thereof;

(*d*) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each hundred rupees of stock held by him, and in any other case every member shall have one vote;

(*e*) on a poll votes may be given either personally or by proxy;

(*f*) the instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under seal or under the hand of an officer or an attorney duly authorised; and

(*g*) a proxy must be a member of the company.

(3) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order

is given may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted."

Notes :—The new section is based on s. 115 of the English Act, but whereas that section allows of its provisions being overridden by the provisions made in the articles of the company, the section here makes certain provisions such as those ... the manner of service of ... the form of proxy

Amendment of section 81, Act VII of 1913.

35. In section 81 of the said Act,—

(*a*) for sub-section (2) the following sub-section shall be substituted, namely :—

"(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extra-ordinary resolution and at a general meeting of which not less than twenty. one days' notice specifying the intention to propose the resolution as a special resolution has been duly given :

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a n ... been given." ;

(*b*) in ... to be passed or a special ... the words "or a special resolution is submitted to be passed" shall be substituted ;

(*c*) in sub-section (4), the words following the words "a poll may be demanded" shall be omitted ; and

(*d*) at the end of sub section (*6*) and sub-section (*7*) the words "or under this Act" shall be added.

Notes :—Section 81 has been amended on the lines of s 117 of the English Act, that is to say, it abolishes the necessity for the confirmation of a special resolution by a second general meeting but requires 21 days' notice to be given of the meeting at which the special resolution is passed—*Notes on Clauses.*

Amendment of section 82, Act VII of 1913.

36. In sub-section (1) of section 82 of the said Act, for the words "the confirmation of the special resolution or the passing of the extraordinary resolution, as the case may be," the words "the passing thereof" shall be substituted, and after the word "typewritten" the words "and duly certified under the signature of an officer of the company" shall be inserted.

Amerdment of section 83, Act VII of 1913

37. To section 83 of the said Act the following sub-sections shall be added, namely :—

"(4) The books containing the minutes of proceedings of any general meeting of a company held after the commencement of the Indian Companies (Amendment) Act 1936, shall be kept at the registeredd office of the company and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that no less than two hours in each day be allowed for inspection), be open to the inspection of any member without charge.

(5) Any member shall at any time after seven days from the meeting be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any minutes referred to in sub section (4) at a charge not exceeding six annas for every hundred words.

(6) If any inspection required under sub-section (4) of this section is refused or if any copy required under sub-section (5) of this section is not furnished within the time specified in sub-section (5) the company and every officer of the company who is knowingly and wilfully in default shall be liable in respect of each offence to a fine not exceeding twenty five rupees and to a further fine to twenty five rupees for every day during which the default continues.

(7) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them."

Notes :—Sub-sections 4 to 7 follow S. 121 of the English Act of 1929.

Amendment of section 83A, Act VII of 1913.

38. In section 83A of the said Act,—

(*a*) for sub-section (1) the following shall be substituted, namely :—

"(*1*) Every company shall have at least three directors." ; and

(*b*) to sub-section (2) the words "except a private company being a subsidiary company of a public company" shall be added.

Notes.—This amendment increases the mininum member of directors of a company.

Amendment of section 83 B, Act VII of 1913.

39. Section 83B of the said Act shall be re-numbered as sub-section (1) of that section and to the section as so re-numbered the following sub-section shall be added, namely :—

"(2) Notwithstanding anything contained in the articles of a company other than a private company not less than two thirds of the whole number of directors shall be persons whose period of office is liable to determination at any time by retirement of directors in rotation :

Provided that nothing herein contained shall apply to a company incorporated before the commencement of the Indian Companies (Amendment) Act 1936, where by virtue of the articles of the company the number of directors, whose period of office is liable to determination at any time by retirement of directors in rotation falls below the two thirds proportion mentioned in this section."

Notes.—This amendment is intended to secure greater independence to the directors by limiting the number of nominated or *ex-officio* directors.—*Notes on Clauses.*

Amendment of section 84, Act VII of 1913.

40. In section 84 of the said Act,—

(*a*) in clause (*ii*) of sub-section (1), for the words "a company limited by guarantee and" the word "companies" shall be substituted ; after the brackets and words "(if any)" where they first occur, the words "or taken from the company and paid or agreed to pay for his qualification shares" shall be inserted, and after the brackets and words "(if any)" where they occur for the second time, the following words shall be added, namely :—

"or made and filed with the registrar an affidavit to the effect that a number of shares not less than his qualification (if any) are registered in his name" ;

(*b*) in subsection (2), after the word "articles" the words ", if any," shall be inserted ; and

(*c*) in sub section (3), after the words "private company" the words "or a company which was a private company before becoming a public company" shall be inserted.

Amendment of section 85, Act VII of 1913.

41. Sub section (2) of section 85 of the said Act shall be omitted, and sub-section (3) of that section shall be re-numbered as sub section (2).

Insertion of new sections 86A to 86 I in Act VII of 1913.

42. After section 86 of the said Act, the following sections shall be inserted, namely :—

Ineligibility of bankrupt to act as director.

"86A. (1) If any person being an undischarged insolvent acts as director or managing agent or manager of any company, he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand rupees or to both.

(2) In this section the expression 'company' includes a company incorporated outside British India which has an established place of business within British India.

Notes.—It reproduces s. 142 of the English Act ; *vide Dawson* v. *African Consolidation*, (1898) 1 Ch. 6.

Assignment of office by directors

86B If in the case of any company provision is made by the articles or by any agreement entered into between any person, and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company :

Provided that the exercise by a director of a power to appoint an alternate or substitute director to act for him during an absence of not less than three months from the district in which meetings of the directors are *ordinarily* held if done with the approval of the board of directors shall not be deemed to be an assignment of office within the meaning of this section :

Provided always that any such alternate or substitute director shall *ipso facto* vacate office if and when the appointor returns to the district in which meetings of the directors are ordinarily held

Explanation.—For the purposes of the provisos to this section, the presidency-towns of Calcutta and Madras shall be deemed to be part of the 24-Parganas and Chingleput districts, respectively, and the presidency-town of Bombay shall be deemed to be part of the Bombay Suburban and the Thana districts.

Notes—It follows s. 151 of the English Act in controlling the practice of director assigning their responsibilities—*Notes on Clauses.*

Avoidance of provisions relieving [illegible]

86C. Save as provided in this section, any provision, whether contained in the articles of a company or in any contract [illegible] otherwise, for exempting any [illegible] or officer of the company or any pers[illegible] not) employed by the company as audito[illegible]y liability which by virtue of any rule [illegible] would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :

Provided that—

(a) in relation to any such provision which is in force at the date of the commencement of the Indian Companies (Amendment) Act, 1936, this section shall have effect only on the expiration of a period of six months from that date, and

(*b*) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force, and

(*c*) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 281 of this Act in which relief is granted to him by the Court.

Nots:—It follows s. 152 of the English Act; *vide Re Brazilian Rubber Plantations & Estates Ltd* (1911) 1 Ch 425, *Re City of London Insurance Co.* (1925) 41 T. L. R. 521.

Loans of directors.

86D. (1) No company shall make any loan or gurantee any loan made to a director of the company or to a firm of which such director is a partner or to a private company of which such director is a director.

(2) In the event of any contravention of sub section (1) any director of the company who is a party to such contravention shall be punishable with fine which may extend to five hundred rupees, and if default is made in repayment of the loan or in discharging the guarantee shall be liable jointly and severally for the amount unpaid.

(3) This section shall not apply to a private company (except a private company which is the subsidiary company of a public company) or to a banking company.

Notes.—It prohibits the making of loans to directors absolutely.

Director not to hold office of profit.

86E. No director or firm of which such director is a partner or private company of which such director is a director shall without the consent of the company in general meeting hold any office of profit under the company except that of a managing director or manager or a legal or technical adviser or a banker:

Provided that nothing herein contained shall apply to a director elected or appointed before the commencement of the Indian Companies (Amendment) Act, 1936, in respect of any office of profit under the company held by him at the commencement of the said Act.

Explanation.—For the purposes of this section the office of managing agent shall not be deemed to be an office of profit under the company.

Notes:—*Vide Iron ship* v. *Blunt*, (1808) L. R. 3 C. P. 484; *Re Hasher's Ticket-machine*, (1912) W. N. 263.

Sanction of directors necessary for certain contracts.

86F. Except with the consent of the directors a director of the company, or the firm of which he is a partner or any partner of such firm, or the private company of which he is a member or director, shall not enter into any contracts for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract or agreement for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.

Removal of directors

86G. (1) The company may by extraordinary resolution remove any director, whose period of office is liable to determination at any time by retirement of directors in rotation before the expiration of his period of office and may by ordinary reso-

[illegible] appointed shall be

[illegible] a director on the

day on which the director in whose place he is appointed was last elected director. A director so removed shall not be re-appointed a director by the board of directors.

(2) This section shall not apply to directors elected or appointed before the commencement of the Indian Companies (Amendment) Act, 1936.

Notes —*Vide Halsbury's Laws of England*, 2nd Ed. Vol. V. 3 p. 343 :

Restrictions on powers of directors

86H. The directors of a public company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting,—

(*a*) sell or dispose of the undertaking of the company ;

(*b*) remit any debt due by a director.

Vacation of office of director.

86I. (1) The office of a director shall be vacated if—

(*a*) he fails to obtain within the time specified in sub-section (1) of section 84, or at any time thereafter ceases to hold the share qualification, if any, necessary for his appointment, or

(*b*) he is found to be of unsound mind by a Court of competent jurisdiction, or

(*c*) he is adjudged an insolvent, or

(*d*) he fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made, or

(*e*) he or any firm of which he is a partner or any private company of which he is a director without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a ... technical adviser or a banker, or ... onsecutive meetings of the directors ... continuous period of three months whichever is the longer without leave of absence from the board of directors, or

(*g*) he or any firm of which he is a partner or any private company of which he is a director accepts a loan or guarantee from the company in contravention of section 86D, or

(*h*) he acts in contravention of section 86F.

(2) Nothing contained in this section shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on grounds additional to those specified in this section."

Notes —This section includes in the Act provision for vacation of office by directors instead of leaving this matter to be provided for in the articles.

Substitution of new section for section 87, Act VII of 1913

43. For section 87 of the said Act, the following section shall be substituted, namely :—

Register of directors, managers and managing agents.

"87. (1) Every company shall keep at its registered office a register of its directors, managers and managing agents containing with respect to each of them the following particulars, that is to say :—

(*a*) in the case of an individual, his present name in full, any former name or surname in full, his usual residential address, his nationality and, if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any and if he holds any other directorship or directorships the particulars of ... ;

(*b*) in the case of ... ame and registered or principal office ; and the ... .nality of each of its directors ; and

(c) in the case of a firm, the full name, address and nationality of each partner, and the date on which each became a partner.

(2) The company shall within the periods respectively mentioned in this sub-section send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managers or managing agents or in any of the particulars contained in the register

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one rupee or such less sum as the company may impose for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with sub section (1) or sub section (2) of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of fifty rupees

(5) In the case of any such refusal, the Court on application made by the person to whom inspection has been refused and upon notice to the company may by order direct an immediate inspection of the register."

Notes.—The substituted section 87 follows s. 144 of the English Act. It provides that the register of directors and managers shall be kept corrected and shall be open to inspection.—*Notes on Clauses.*

Insertion of new heading and sections 87A to 87 I in Act VII of 1913.

44. After section 87 of the said Act the following heading and sections shall be inserted, namely :—

"*Managing Agents.*

Duration of appointment of managing agent.

87 A. (1) No managing agent shall, after the commencement of the Indian Companies (Amendment) Act, 1936, be appointed to hold office for a term of more than twenty years at a time.

(2) Notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company a managing agent of a company appointed before the commencement of the Indian Companies (Amendment) Act, 1936, shall not continue to hold office after the expiry of twenty years from the commencement of the said Act unless then reappointed thereto or unless he has been reappointed thereto before the expiry of the said twenty years.

(3) A managing agent whose office is terminated by virtue of the provisions of sub-section (2) shall upon such termination be entitled to a charge upon the assets of the company by way of indemnity for all liabilities or obligations properly incurred by the managing agent on behalf of the company subject to existing charges and encumbrances, if any.

(4) The termination of the office of a managing agent by virtue of the provisions of sub-section (2) shall not take effect until all moneys payable to the managing agent for loans made to or remuneration due up to the date of such termination from the company are paid.

(5) Nothing in this section shall apply to a private company which is not the subsidiary company of a public company.

Notes—It limits the period for which manging agents may be appointed and may continue to act without re-appointment —*Notes on Clauses.*

Conditions applicable to managing agents.

87B. Notwithstanding anything to the contrary contained in the articles of the company or in any agreement with the company—

(*a*) a company may, by resolution passed at a general meeting of which notice has been given to the managing agent in the same manner as to members of the company, remove a managing agent if he is convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code* and being under the provisions of the Code of Criminal Procedure, 1898† nonbailable ; and the purposes of this clause, were the managing agent is a firm or company an offence committed by a member of such firm or a director of or an officer holding a general power of attorney from such company shall be deemed to be an offence committed by such firm or company :

Provided that a managing agent shall not be liable to be removed under the provisions hereof if the offending member, director or officer as aforesaid is expelled or dismissed by the managing agent within thirty days from the date of his conviction or if his conviction is set aside on appeal ;

(*b*) the office of a managing agent shall be vacated if he is adjudged insolvent;

(*c*) a transfer of his office by a managing agent shall be void unless approved by the company in general meeting :

Provided that in the case of a managning agent's firm a change in the partners thereof shall not be deemed to operate as a transfer of the office of managing agent, so long as one of the original partners shall continue to be a partner of the managing agent's firm For the purpose of this proviso 'original partners' shall mean, in the case of managing agents appointed before the commencement of the Indian Companies (Amendment) Act, 1936, partners who were the partners at the date of the commencement of the said Act, and in the case of managing agents appointed after the commencement of the said Act, partners who were partners at the date of the appointment ;

(*d*) a charge or assignment of his remuneration or any part thereof effected by a managing agent shall be void as against the company ;

(*e*) if a company is wound up either by the Court or voluntarily, any contract of management made with a managing agent shall be thereupon determined without prejudice however, to the right of the managing agent to recover any moneys recoverable by the managing agent from the company :

Provided that where the Court finds that the winding up is due to the negligence or default of the managing agent himself the managing agent shall not be entitled to receive any compensation for the premature termination of his contract of management ; and

(*f*) the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent's contract of management made after [illegible] shall not [illegible] meeting [illegible]

Provided that nothing herein contained shall apply to the appointment of company's first managing agent made prior to the issue of the prospectus or statement in lieu of prospectus where the terms of the appointment of such managing agent are there set forth.

Notes :— [illegible] controls the transfer [illegible] gives the company [illegible]

* XLV of 1860. † V of 1898.

Remuneration of managing agent

87 C. (1) Where any company appoints a managing agent after the commencement of the Indian Companies (Amendment) Act, 1936, the remuneration of the managing agent shall be a sum based on fixed percentage of the net annual profits of the company, with provision for a minimum payment in the case of absence of or inadequacy of profits, together with an office allowance to be defined in the agreement of management.

(2) Any stipulation for remuneration additional to or in any other form than the remuneration specified in sub section (1) shall not be binding on the company unless sanctioned by a special resolution of the company.

(3) For the purposes of this section 'net profits' means the profits of the company calculated after allowing for all the usual working charges, interest on loans and advances, repairs and outgoings, depreciation, bounties or subsidies received from Government or from a public body, profits by way of premium on shares sold, profits on sale proceed of forfeited shares, or profits from the sale of the whole or part of the undertaking of the company but without any deduction in respect of income-tax or super-tax, or any other tax or duty on income or revenue or for expenditure by way of interest on debentures or otherwise on capital account or on account of any sum which may be set aside in each year out of the profits for reserve or any other special fund.

(4) This section shall not apply to a private company except a private company which is the subsidiary company of a public company or to any company whose principal business is the business of insurance.

Notes.—It lays down the method by which the remuneration of managing agent shall be fixed in companies other than insurance companies.—*Notes on Clauses.*

Loans to managing agents.

87D. (1) No company shall make to a managing agent of the company or to any partner of the firm, if the managing agent is a firm, or to any director of the private company, if the managing agent is a private company, any loan out of moneys of the company or guarantee any loans made to a managing agent.

(2) Nothing contained in this section shall apply to any credit held by a managing agent in a current account maintained subject to limits previously approved by the board of directors by the company with the managing agent for the purposes of the company's business.

(3) In the event of any contravention of sub-section (1) any director of the company who is a party to the making of the loan or giving of the guarantee shall be punishable with fine which may extend to five hundred rupees, and if default is made in repayment of the loan or discharging the guarantee shall be liable jointly and severally for the amount unpaid.

(4) Nothing in this section shall apply to a private company except a private company which is the subsidiary company of a public company.

(5) Except with the consent of three-fourths of the directors present and on entitled to vote the resolution, a managing agent of the company, or the firm of which he is a partner, or any partner of such firm, or, if the managing agent is a private company, a member or director thereof, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company provided that nothing herein contained shall affect any such contract for such sale purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.

Notes :—It makes provision in respect of managing agent, [illegible] made by s. 86D in respect of directors for controlling loans by [illegible] managing agents.—*Notes on Clauses.*

87E. (1) No company incorporated under this Act after the commencement of the Indian Companies (Amendment) Act, 1936, which is under the management of a managing agent shall make any loan to or guarantee any loan made to any company under management by the same managing agent, and no company shall after the expiry of six months from the commencement of the said Act except by way of renewal of an existing loan or guarantee given make any loan to or guarantee any loan made to any such company :

Loans to or by companies under the same management.

Provided that nothing herein contained shall apply to loans made or guarantees given by a company to or on behalf of a company under its own management or loans made by or to a company to or by a subsidiary company thereof or to guarantees given by a company on behalf of a subsidiary company thereof.

(2) In the event of any contravention of the provisions of this section, any director or officer of the company making the loan or giving the guarantee who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees and shall be jointly and severally liable for any loss incurred by the company in respect of such loan or guarantee.

Notes—The alteration made in sub section (1) provides for excepting renewals of old loans or guarantees whose continuance may be essential to the survival of the Company from the purview of the sub section. Sub-section (2) has been expanded to include a civil liability in addition to the penalty, which has been reduced in amount, and to apply the penalty directly to director or officer at fault—*Notes on Clauses*

Purchase by company of shares of company under same managing agent

87F. A company other than an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities, shall not purchase shares or debentures of any company under management by the same managing agent unless the purchase has been previously approved by an unanimous decision of the board of directors of the purchasing company.

Restriction on managing agent's powers of management.

87G. A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or, except with the authority of the directors, and within the limits, fixed by them, a power to invest the funds of the company, and any delegation of any such power by a company to a managing agent shall be void.

Managing agent not to engage in business competing with the business of managed company.

87H. A managing agent shall not on his own account engage in any business which is of the same nature as and directly competes with the business carried on by a company under his management or by a subsidiary company of such company

Limit on number of directors appointed by managing agent.

87I. Notwithstanding anything contained in the articles of a company other than a private company the directors, if any, appointed by the managing agent shall not exceed in number one-third of the whole number of directors."

Amendment of section 90, Act VII of 1913.

45. In section 90 of the said Act, for the words "not situate in British India" the words "either in or outside British India" shall be substituted.

Amendment of section 91A, Act VII of 1913.

46. In section 91A of the said Act,—

(*a*) in the proviso to sub-section (1), for the words "member of any specified firm or company" the words "director or a member of any specified company or is a member of any specified firm" shall be substituted; and

(*b*) the following sub-sections shall be added, namely:—

"(3) A register shall be kept by the company in which shall be entered particulars of all contracts or arrangements to which sub-section (1) applies, and which shall be open to inspection by any member of the company at the registered office of the company during business hours.

(4) Every officer of the company who knowingly and wilfully acts in contravention of the provisions of sub section (3) shall be liable to a fine not exceeding five hundred rupees."

Amendment of section 91B, Act VII of 1913.

47. In section 91B of the said Act,—

(*a*) in sub section (1), after the word "interested" the words "nor shall his presence count for the purpose of forming a quorum at the time of any such vote" shall be inserted; and

(b) to sub-section (3) the following proviso shall be added, namely:—

"Provided that where a private company is a subsidiary company of a public company, this section shall apply to all contracts or arrangements made on behalf of the subsidiary company with any person other than the holding company."

Amendment of section 91C, Act VII of 1913.

48. In section 91C of the said Act, after the word "manager" the words "or managing agent" shall be inserted and after the words "the company shall" the words, "within twenty one days from the date of entering into the contract or the varying of the contract," shall be inserted.

Amendment of section 91 D, Act VII of 1913.

49. In section 91D of the said Act,—

(*a*) in sub-section (1) after the words "private company" the words "not being the subsidiary company of a public company" shall be inserted; and,

(*b*) in sub-section (2), after the words "to the company" the words "and send copies to the directors" shall be inserted.

Amendment of section 93, Act VII of 1913.

50. In section 93 of the said Act,—

(*a*) in sub-section (1),—

(*i*) in clause (*a*), after the word "company" the words "and the number of redeemable preference shares intended to be issued with the date or, where no date is fixed, the period of notice required and the proposed method of redemption" shall be inserted;

(*ii*) in clause (*c*), before the brackets and words "(if any)" the words "and managing agents or proposed managing agents" shall be inserted, and after the brackets and words "(if any)" the following words shall be inserted, namely:—

"and any provision in the articles or in any contract as to the appointment of managers or managing agents and the remuneration payable to them";

(*iia*) after clause (*e*) the following clause shall be inserted, namely:—

"(*ee*) where any issue of shares or debentures is underwritten, the names of the underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge the underwriting obligations; and";

(*iii*) after clause (*f*) the following clause shall be inserted, namely,—

"(*ff*) where any property referred to in clause (*f*) has within the two years preceding the issue of the prospectus been transferred by sale the amount paid by the purchaser at each such transfer so far as the information is available and,

where any such property is a business, the profits accruing from such business during each of the three years immediately preceding the issue of the prospectus or during each year of the existence of the business if less than three years so far as the information is available. A balance sheet of the business concerned made up to a date not more than ninety days before the date of the issue of the prospectus shall be appended to the prospectus ; and";

(*iiia*) in clause (*h*) for the word "or the rate of any such commission" the words "or as discount in respect of shares issued, showing separately the amount, if any so paid to the managing agents" shall be substituted ;

(*iv*) in clause (*l*), after the words "every material contract" the words "including contracts relating to the acquisition of property to which clause (*f*) applies" shall be inserted and in the proviso after the word "contract", where it occurs for the second time, the following brackets and words shall be insrted namely :—

"(except a contract appointing or fixing the remuneration of a managing director or managing agent) " ;

(*v*) in clause (*o*), after the word "by" the words "and the right in respect of capital and dividends attached to" shall be inserted ;

(*vi*) after clause (*o*) the following word and clause shall be added, namaly :-

"and

(*p*) where the articles of the Company impose any restrictions upon the members of the company in respect of the right to attend, speak or vote at meetings of the company or of the right to transfer shares, or upon the directors of the company in respect of their powers of mangement, the na'ure and extent of those restrictions " ;

(b) after sub-section (1) the following sub sections shall be inserted, namely :—

"(*1A*) Where the prospectus is issued by a company which has been carrying on business prior to the issue thereof, the prospectus shall set out the following reports in addition to the matters referred in sub-section (1) namely :—

(*i*) a report ... [illegible]

of the [illegible]

tion [illegible]

the is[illegible] ... respect to the rates of the dividends (if any) paid by the company on each class of shares in the company for each of the said three years giving particulars of each such class of shares on which such dividends have been paid and the source from which the dividends have been paid and particulars of the cases in which no dividends have been paid on any class of shares for any of those years, and if no accounts have been made up for any part of a period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact ;

(*ii*) if the proceeds or any part of the proceeds of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by [illegible] e certificate referred to in section [illegible] the profits of the business in res[illegible]

[illegible] accounts of the company have been made up only in respect of two years or any shorter period, this sub-section shall have effect as if references to two years or such shorter period were substituted for references to three years.

(*1B*) The statement referred to in clause (*f*) of sub-section (*1*) and the report referred to in sub-section (*1A*) with respect to the profits of a company

or business shall show clearly the trading results and all charges and expenses incidental thereto excluding income or profits having no relation to the trading

of profit or income of a non-

riated from profits to such purposes as payment of taxation or reserves

(1C) Where any part of the sums required for the matters set out in sub-section (2) of section 101 is to be provided out of sources other than share capital particulars *of the amount to be so provided and the sources thereof.*"; and

(*c*) to sub section (4) the following proviso shall be added, namely :—

"Provided that the said requirements, except the requirement as to the amount or estimated amount of preliminary expenses, shall apply to a prospectus filed in pursuance of section 154."

Notes :— The amendments provide for the disclosure in the prospectus of a company of certain details, indicated in the amendments contained in the clause, which have not hitherto been required to be disclosed—*Notes on Clauses.*

Amendment of section 96, Act VII of 1913

51. Section 96 of the said Act shall be re-numbered as sub section (1) of that section and after the sub-section as so re-numbered, the following sub-section shall be added, namely :—

"(2) It shall not be lawful to issue any form of application for the shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of section 93 :—

Provided that this sub-section shall not apply if it is shown that the form of application was issued either—

(*a*) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or

(*b*) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this sub-section, he shall be liable to a fine not exceeding five hundred rupees,"

Amendment of section 97, Act VII of 1913.

52. (1) Section 97 of the said Act shall be re-numbered as sub section (2) of that section and the following sub-section shall be inserted as sub-section (1), namely :—

"(1) If a prospectus is issued which does not comply with the provisions of section 93, every person who is knowingly responsible for the issue of such prospectus shall be liable to a fine not exceeding fifty rupees for every day from the day of the issue of the prospectus until a copy complying with the requirements of section 93 is filed."

(2) In the said section as so renumbered—

(*a*) after the words "non-compliance with" in both places where they occur, the words "or contravention of" shall be inserted ;

(*b*) after the word "non-compliance", in the three places where it occurs, the words "or contravention" shall be inserted ; and

(*c*) after clause (*b*) the following word and clause shall be inserted, namely :—

"or

(*c*) the non-compliance or contravention was in respect of matters which in the opinion of the Court were immaterial, or was otherwise such as ought in the opinion of the Court having regard to all the circumstances of the case reasonably to be excused :"

Notes :—Section 97 inserts a penalty for the issue of a prospectus which fails to comply with the provisions of s. 93—*Notes on Clauses.*

53. In sub-section (1) of section 93 of the said Act, for the words "set out in the Second Sechedule" the word "set out in the form marked I in the Second Schedule" shall be substituted.

Amendment of section 98, Act VII of 1913

54. After section 98 of the said Act the following section shall be inserted, namely :—

Insertion of new section 98A in Act VII of 1913.

Document offering shares or debentures for sale to be deemed a prospectus

"93A. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company and all enactments and rules of law as to the contents of prospectuses and to liability in [illegible] om prospectuses or otherwise relating [illegible] accordingly as if the shares or deben- [illegible] ibscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures but without prejudice to the liability, if any of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act it shall, unless the contrary is proved, be evidence that an allotment of or an agreement to allot shares or debentures was made with a view to the shares or debentures being offered for sale to the public, if it is shown—

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot ; or

(b) that at the date when the offer was made the whole of the consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 97 shall apply to the person or persons making the offer as though they were persons named in a prospectus as directors of a company, and the provisions of section 93 shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated in a prospectus,—

(a) the net amount of the consideration received or to be received by the the company in respect of the shares or debentures to which the offer relates, and

(b) the place and time [illegible] under which the said shares or debentures hav [illegible] be inspected.

(4) Where a [illegible] hich this section relates is a company or a firm [illegible] ument aforesaid is signed on behalf of the company or firm by all directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing."

Notes :—This amendment introduces s 38 of the English Act by which a document containing an offer of share is to be deemed as prospectus—*Notes on Clauses.*

Amendment of section 101, Act VII of 1913

55. In section 101 of the said Act,—

(a) for sub-sections (1) and (2) the following sub-sections shall be substituted, namely :—

"(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus

as the minimum amount which in the opinion of the directors must be raised by the issue of share capital in order to provide the sums or, if any part thereof to be defrayed in any other manner, the balance of the sum required to be provided in respect of the matters specified in sub-section *(2)* has been subscribed, and the sum of at least five percent. thereof has been paid to or received in cash by the company.

(2) The matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following, namely :—

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,

(b) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company,

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters, and

(d) working capital.

(2A) The amount referred to in sub section (1) as the amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.

(2B) All moneys received from applicants for shares shall be deposited and kept in a scheduled bank as defined in the Reserve Bank of India Act, 1934, * until returned in accordance with the provisions of sub section (4) or until the certificate to commence business is obtained under section 103.

(2C) In the event of any contravention of the provisions of sub section (2B) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding five hundred rupees.": and

(b) in sub-section (4), for the word "twenty" the word "eighty", for the word "thirty" the word "ninety" and for the word "thirteeth" the word "nineteeth" respectively shall be substituted.

Notes.—This amendment introduces s. 38 of the English Act which is aimed at discouraging any floatation of companies with insufficient capital—*Notes on Clauses.*

Amendment of section 102, Act VII of 1913.

56. In sub section (1) of section 102, after the words "and not later" the words "or in any case where the company is not required to *hold a statutory meeting or where the allotment is made after the holding of* the statutory meeting within one month after the date of the allotment and not later" shall be added.

Amendment of section 104, Act VII of 1913

57. To section 104 of the said Act the following sub-section shall be added, namely :—

(4) Nothing in this section shall apply to the issue and allotment by a company of shares which under the provisions of its articles were forfeited for non-payment of calls."

Amendment of section 105, Act VII of 1913.

58. In sub-section (2) of section 105 of the said Act, after the words "as aforesaid" the words "and save as provided in section 105A" shall be inserted.

Insertion of new sections 105A and 105B in Act VII of 1913.

59. After section 105 of the said Act, the following sections shall be inserted, namely :

*II of 1934

as the minimum amount which in the opinion of the directors must be raised by the issue of share capital in order to provide the sums or, if any part thereof to be defrayed in any other manner, the balance of the sum required to be provided in respect of the matters specified in sub-section (2) has been subscribed, and the sum of at least five percent. thereof has been paid to or received in cash by the company.

(2) The matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following, namely :—

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,

(b) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company,

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters, and

(d) working capital.

(2A) The amount referred to in sub section (1) as the amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.

(2B) All moneys received from applicants for shares shall be deposited [illegible] defined in the Reserve Bank of India Act, [illegible] lance with the provisions of sub section (4) or [illegible] business is obtained under section 103.

(2C) In the event of any contravention of the provisions of sub section (2B) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding five hundred rupees.": and

(b) in sub-section (4), for the word "twenty" the word "eighty", for the word "thirty" the word "ninety" and for the word "thirteeth" the word "nineteeth" respectively shall be substituted.

Notes—This amendment introduces s 38 of the English Act which is aimed at discouraging any floatation of companies with insufficient capital—*Notes on Clauses.*

Amendment of section 102, Act VII of 1913.

56. In sub section (1) of section 102, after the words "and not later" the words "or in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting within one month after the date of the allotment and not later" shall be added.

Amendment of section 104, Act VII of 1913

57. To section 104 of the said Act the following sub-section shall be added, namely :—

(4) Nothing in this section shall apply to the issue and allotment by a company of shares which under the provisions of its articles were forfeited for non-payment of calls."

Amendment of section 105, Act VII of 1913.

58. In sub-section (2) of section 105 of the said Act, after the words "as aforesaid" the words "and save as provided in section 105A" shall be inserted.

Insertion of new sections 105A and 105B in Act VII of 1913.

59. After section 105 of the said Act, the following sections shall be inserted, namely :

*II of 1934

'105A. (1) Subject to the provisions of this section it shall be lawful for a company to issue at a discount shares in the company of a class already issued :

Power to issue shares at a discount.

Provided that—

(*a*) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company and must be sanctioned by the Court;

(*b*) the resolution must specify the maximum rate of discount (not exceeding ten per cent. in any case) at which shares are to be issued ;

(*c*) not less than one year must at the date of issue have elapsed since the date on which the company was entitled to commence business ;

(*d*) the shares to be issued at a discount must be issued within six months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Every prospectus relating to the issue of the shares and every balance-sheet issued by the company [illegible] of the shares must [illegible] the shares or of so [illegible] of the issue of the document in question.

(3) If default is made in complying with sub-section (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty rupees.

Notes :—It follows s 47 of the English Act of 1929.

Issue of redeemable preference shares.

105B. (1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be, liable to be redeemed :

Provided that –

(*a*) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or out of sale proceeds of any property of the company ;

(*b*) no such shares shall be redeemed unless they are fully paid ;

(*c*) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund" a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company ;

(*d*) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be, liable to be redeemed or, where no definite date is fixed for redemption, the period of notice to be given for redemption.

If a company fails to comply with the provisions of this sub-section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand rupees.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) Where in pursuance of the section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purpose of calculating the fees payable under section 249 be deemed to be increased by the issue of shares in pursuance of this sub section :

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub section unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of the last foregoing sub-section, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Further issue of capital.

105C. Where the directors decide to increase the capital of the company by the issue of further shares such shares shall be offered to the members in proportion to the existing shares held by each member (irrespective of class) and such offer shall be made by notice specifying the number of shares to which the member is [illegible] offer, if not accepted, will be [illegible] ion of such time, or on receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company."

Amendment of section 109, Act VII of 1913.

60. Section 109 of the said Act shall be re-numbered as sub-section (*1*) of that section, and

(*a*) in the section as so renumbered, clause (*e*) shall be re-lettered as clause (*f*) and the following shall be inserted as clause (*e*), namely :—

"(*e*) a mortgage or a charge, not being a pledge on any movable property of the company except stock-in-trade ; or", and

(*b*) to the section as so re-numbered the following sub section shall be added, namely :—

"(2) Where any mortgage or charge on any property of a company required to be registered under this section has been so registered, any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the said mortgage or charge as from the date of such registration."

Notes—Under the existing provisions of the Act a charge or mortgage created over movable property of the company other book debts or uncalled share capital need not be registered. The first amendment requires such charges or mortgages to be registered with certain disqualifications. The second amendment is designed to affect transferees with notice as from the date of registration.—*Notes on Clauses.*

Insertion of new section 109A in Act VII of 1913.

61. After section 109 of the said Act the following section shall be inserted, namely :—

Registration of charges on properties acquired subject to charge.

"109A. (1) Where after the commencement of the Indian Companies (Amendment) Act, 1936, a company registered in British India acquires any property which is subject, to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge,

together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed :

Provided that, if the property is situate and the charge was created outside British India, twenty-one days *after the date on which the copy of the instument* could in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of five hundred rupees".

Notes.—This amendment inserts the provisions of s. 81 of the English Act, of 1929

Amendment of section 116, Act VII of 1913.

62. To section 116 of the said Act the following sub-section shall be added, namely :—

"(3) Whenever the terms or conditions or extent or operation of any mortgage or charge registered under this section are modified, it shall be the duty of the company to send to the registrar the particulars of such modification and the provisions of this section as to registration of mortgage or a charge shall apply to such modification of the mortgage or charge as aforesaid."

Amendment of section 119, Act VII of 1913.

63. For sub-section (2) of section 119 of the said Act the following sub-sections shall be substituted, *namely* :—

"(2) Where a receiver of the property of a company has been *appointed*, every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.

(3) If default is made in complying with the [illegible]
the company and every director, manager, [illegible]
officer of the company and every receiver [illegible]
rises or permits the default, shall be liable to [illegible]
rupees."

Amendment of section 120, Act VII of 1913.

64. Section 120 of the said Act shall be re-numbered as sub-section (*1*) of that section, and—

(*a*) in that section as so re-numbered, after the words "mortgage or charge" where they occur for the second time, the following words shall be inserted, namely :—

"or the omission to give intimation to the registrar of the payment or satisfaction of a debt for which a charge or mortgage was created" ;

and

(*b*) to that section as so re-numbered the following *sub-section shall* be added, namely :—

"(2) Where the Court extends the time for the registration of a mortgage or charge, the order shall not prejudice any rights acquired in respect of the property concerned prior to the time when the mortgage or charge is actually registered."

Substitution of new section for section 121, Act VII of 1913.

65. For section 121 of the said Act the following section shall be substituted, namely :—

Registration of satisfaction of mortages and charges.

"121. (1) It shall be the duty of the company to give intimation to the registrar of the payment or satifaction of any charge or mortgage created by the company and requiring registration under section 109 within twenty-one days form the date of the payment or satisfaction thereof.

(2) The registrar shall on receipt of such intiamation cause a notice to be sent to the mortgagee calling upon him to show cause, within a time (not exceeding fourteen days) to be fixed by such notice, why the payment or satisfaction of the charge or mortgage should not be recorded.

(3) The registrar shall, if no cause is shown, order that a memorandum of satisfaction be entered on the register and shall if required furnish the company with a copy thereof.

(4) Where cause is shown, the registrar shall record a note to that effect in the register, and shall inform the company that he has done so."

Notes —Section 121 of the Act as it stands empowers the Registrar on proof of satisfaction of a mortgage or charge to record the satisfaction in the register. It is not however, obligatory on a company or the mortgagee to have such satisfaction recorded, and the records of the registrar may accordingly remain incomplete—*Notes on Clauses.*—

Amendment of section 122, Act VII of 1913.

66. In sub section (1) of section 122 of the said Act, clause (*b*) shall be re-lettered as clause (*c*) and the following clause shall be inserted as clause (*b*), namely :—

"(*b*) of the payment or satisfaction of a debt in respect of which a mortgage or charge has been registered under section 109 or section 109A ; or".

Amendment of section 123, Act VII of 1913

67. In sub-section (*1*) of section 123 of the said Act, the word "limited" shall be omitted and after the words "property of the company" the words "and all floating charges on the undertaking or on any property of the company" shall be inserted.

Notes.—It has been doubted whether the provisions of s. 123 apply to floating charges in view of the fact that such charges do not affect property until charges are crystallized. The amendment makes the intention of this section clear—*Notes on Clauses.*

Substitution of new section for section 130, Act VII of 1913.

68. For section 130 of the said Act the following section shall be substituted, namely :—

Books to be kept by company and penalty for not keeping proper books.

" 130. (1) Every company shall cause to be kept proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place ;

(*b*) all sales and purchases of goods by the company ;

(*c*) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be open to inspection by the directors during business hours.

(3) In the case of a company managed by a managing agent the agent, or where the managing agent is a firm or company, the or director of such firm or company and in any other case the di.

directors who have knowingly by their act or omission been the cause of any default by the company in complying with the requirements of this section, shall in respect of such offence be liable to a fine not exceeding one thousand rupees."

Notes—This section is taken from s. 122 of the English Act for the existing section.

Amendment of section 131, Act VII of 1913.

69. In section 131 of the said Act,—

(a) for sub-section (1) the following sub-section shall be substituted, namely :—

"(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a balance-sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account since the incorporation of the company and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months or in the case of a company carrying on business or having interests outside British India by more than twelve months :

Provided that the registrar may for any special reason extend the period by a period not exceeding three months" ;

(b) in sub section (2), after the words "The balance-sheet" the words "and the profit and loss account or income and expenditure account" shall be inserted ;

(c) in sub-section (3) for the words "such balance-sheet so audited" the words "such balance-sheet and profit and loss account or income and expenditure account so audited together with a copy of the auditors' report" shall be substituted and for the words "seven days" wherever they occur the words "fourteen days" shall be substituted ; and

(d) sub-section (4) shall be omitted.

Notes—This amendment introduces the substance of sub-section (1) of section 123 of the English Act and makes the section applicable to all companies—*Notes on Clauses.*

Insertion of new section 131A in Act VII of 1913.

70. After section 131 of the said Act the following section shall be inserted, namely :—

Directors' Report.

"131A. (1) The directors shall make out and attach to every balance-sheet a report with respect to the state of the company's affairs the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the Reserve Fund, General Reserve or Reserve Account shown specifically on the balance-sheet or to a Reserve Fund, General Reserve or Reserve Account to be shown specifically in a subsequent balance-sheet.

(2) The report referred to in sub-section (1) may be signed by the chairman of the directors on behalf of the directors if authorised in that behalf by the directors.

(3) The provisions of sub-section (3) of section 130 shall apply to any person being a director who is knowingly and wilfully guilty of a default in complying with this section."

Notes.—This amendment inserts the provisions contained in sub-section (2) of section 123 of the English Act regarding the report by the directors—*Notes on Clauses.*

Amendmend of section 132, Act VII of 1913.

71. To section 132 of the said Act the following sub-section shall be added, namely :—

"(3) The profit and loss account shall include particulars showing the total of the amount paid whether as fees, percentages or otherwise to the managing agent, if any, and the directors respectively as remuneration for their services and, where a special resolution passed by the members of the company so requires, to the manager, and the total of the amount written off for depreciation. If any director of the company is by virtue of the nomination, whether direct or indirect, of the company, a director of any other company, any remuneration or other emoluments received by him for his own use, whether as a directer of, or otherwise in connection with the management of, that other company, shall be shown in a note at the foot of the account or in a statement attached thereto."

Notes.—It introduces a provision requiring disclosure in the profit and loss account, now made compulsory by new sub-section (1) of s. 131 of certain information of importance to shareholders—*Notes on Clauses.*

Insertion of new section 132A in Act VII of 1913

72. After section 132 of the said Act the following section shall be inserted, namely :—

Balance-sheet to include particulars as to subsidiary companies.

"132A. (1) Where a company, in this Act referred to as the holding company, holds shares, either directly or through a nominee, in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance-sheet of the holding company the last audited balance-sheet, profit and loss account and auditors' report of the subsidiary company or companies, and a statement signed by the persons by whom, in pursuance of section 133, the balance sheet of the holding company is signed stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to what extent—

(*a*) Provison has been made for the losses of a subsidiary company either in [illegible] of the holding company or of both, and

[illegible] pany have been taken into account by the di[illegible] arriving at the profits and losses of the com[illegible]

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner :

Provided further that for the purposes of this section an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities, shall not be deemed to be a holding company by reason only that part of its assets consists in 51 per cent. or more of the shares of another company.

(2) If, in the case of a subsidiary company, the auditors' report on the balance-sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their [illegible] the books of [illegible] to the balance [illegible] the manner in which the report is qualified.

(3) For the purposes of this section the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsid[illegible]

company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance-sheet shall so report in writing and their report shall be annexed to the balance-sheet in lieu of the statement.

(5) The holding company may by a resolution authorise representatives named in the resolution to inspect the books of account kept in accordance with section 130 by any subsidiary company, and on such resolution being passed those books of account shall be open to inspection by those representatives at any time during business hours.

(6) The rights conferred by section 138 upon members of a company may be exercised in respect of any subsidiary company by members of the holding company as if they were members of that subsidiary company."

Notes.—It adopts the provisions of s. 126 of the English Act.

Amendment of section 133, Act VII of 1913

73. In section 133 of the said Act,—

(*a*) after the word "balance-sheet" wherever it occurs the words "and profit and loss account or income and expenditure account" shall be inserted;

(*b*) after the word "manager" wherever it occurs the words "or managing agent" shall be inserted; and

(*c*) for sub-section (3) the following sub-section shall be substituted, namely:—

"(3) If any default is made in laying before the company or in issuing a balance-sheet and profit and loss account or income and expenditure account *as required by section 131* or if any balance-sheet and profit and loss account or income and expenditure account is issued, circulated or published which does not comply with the requirements laid down by and under section 131, section 132, section 132A and this section, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to five hundred *rupees*."

Amendment of section 134, Act VII of 1913.

74. In sub-section (1) of section 134 of the said Act, for the words "after the balance-sheet has" the words "after the balance-sheet and profit and loss account have" shall be substituted, and for the word "thereof" the words "of the balance-sheet" shall be substituted.

Amendment of section 135, Act VII of 1913.

75. In section 135 of *the said Act*, after the words "the balance-sheet" the words "and the profit and loss account or the income and expenditure account" shall be added.

Amendment of section 136, Act VII of 1913.

76. In sub-section (2) of section 136 of *the said Act*, after the words "A copy of the statement" the words "together with a copy of the last audited balance-sheet laid *before* the members of the company" shall be inserted.

Amendment of section 137, Act VII of 1913

77. In section 137 of the said Act,—

(*a*) to sub section (3) the following words shall be added, namely:—

"and the Court may on the application of the registrar and upon notice to the company make an order on the company for production of such docu-

ments as in its opinion may reasonably be required by the registrar for his investigation and allow the registrar inspection thereof on such terms and conditions as it thinks fit" ;

and

(*b*) after sub-section (5) the following sub-sections shall be added, namely :—

"(6) If it is represented to the registrar in materials placed before him by any contributory or creditor that the business of a company is carried on in fraud of its creditors or in fraud of persons dealing with the company or for a fraudulent purpose, he may after giving the company an opportunity of being heard by written order call on the company for information or explanation on matters specified in the order within such time as he may specify in the order and the provisions of sub-sections (2), (3) and (5) of this section shall apply to such order. If upon investigation the registrar is satisfied that any representation on which he has taken action under this sub-section is frivolous or vexatious, he shall disclose the identity of the informant to the company.

(7) The provisions of this section shall apply *mutatis mutandis* to documents which a liquidator is required to file under this Act."

Notes—We have amended the provisions to be inserted in s. 137 by providing that action by the registrar shall be taken only after the company has been given an opportunity of explanation, as a check on frivolous charges that the registrar shall disclose the identity of his informant if he finds the allegations made to be frivolous or vexatious—*Report of the Select Committee.*

Amendment of section 141, Act VII of 1913.

78. In section 141 of the said Act.—

(*a*) in sub-section (1), after the words "by the Local Government" the word[illegible] " shall be inserted ;

[illegible] proviso shall be added, namely :—

"[illegible]d incidental to an investigation held in pursuance of clause (iv) of section 138 shall be paid out of the assets of the company and shall be recoverable as an arrear of land-revenue" ; and

(*c*) after sub section (3) the following sub-section ahall be added, namely :—

"(4) The registrar shall keep the copy of the report sent to him with the records of the company in his custody."

Notes—This amendment provides *interalia* for charging the expenses of an investigation undertaken in consequence of a report by the registrar to the company itself—*Notes on Clauses.*

Insertion of new section 141A in Act VII of 1913.

79. After section 141 of the said Act the following section shall be inserted, namely :—

Institution of prosecutions.

"141A. (1) If from any report made under section 138 it appears to the Local Government that any person has been guilty of any offence in relation to the company for which he is criminally liable, the Local Government shall refer the matter to the Advocate General or the Public Prosecutor.

(2) If the officer to whom the matter is referred considers that the case is one in which a prosecution ought to be instituted, he shall cause proceedings to be instituted, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance-sheet shall so report in writing and their report shall be annexed to the balance-sheet in lieu of the statement.

(5) The holding company may by a resolution authorise representatives named in the resolution to inspect the books of account kept in accordance with section 130 by any subsidiary company, and on such resolution being passed those books of account shall be open to inspection by those representatives at any time during business hours.

(6) The rights conferred by section 138 upon members of a company may be exercised in respect of any subsidiary company by members of the holding company as if they were members of that subsidiary company."

Notes.—It adopts the provisions of s. 126 of the English Act.

Amendment of section 133, Act VII of 1913.

73. In section 133 of the said Act,—

(*a*) after the word "balance-sheet" wherever it occurs the words "and profit and loss account or income and expenditure account" shall be inserted;

(*b*) after the word "manager" wherever it occurs the words "or managing agent" shall be inserted; and

(*c*) for sub-section (3) the following sub-section shall be substituted, namely:—

"(3) If any default is made in laying before the company or in issuing a balance-sheet and profit and loss account or income and expenditure account as required by section 131 or if any balance-sheet and profit and loss account or income and expenditure account is issued, circulated or published which does not comply with the requirements laid down by and under section 131, section 132, section 132A and this section, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to five hundred rupees."

Amendment of section 134, Act VII of 1913.

74. In sub-section (1) of section 134 of the said Act, for the words "after the balance-sheet has" the words "after the balance-sheet and profit and loss account have" shall be substituted, and for the word "thereof" the words "of the balance-sheet" shall be substituted.

Amendment of section 135, Act VII of 1913.

75. In section 135 of the said Act, after the words "the balance-sheet" the words "and the profit and loss account or the income and expenditure account" shall be added.

Amendment of section 136, Act VII of 1913.

76. In sub-section (2) of section 136 of the said Act, after the words "A copy of the statement" the words "together with a copy of the last audited balance-sheet laid before the members of the company" shall be inserted.

Amendment of section 137, Act VII of 1913.

77. In section 137 of the said Act,—

(*a*) to sub section (3) the following words shall be added, namely:—

" and the Court may on the application of the registrar and upon notice to the company make an order on the company for production of such docu-

ments as in its opinion may reasonably be required by the registrar for his investigation and allow the registrar inspection thereof on such terms and conditions as it thinks fit" ;

and

(*b*) after sub-section (5) the following sub-sections shall be added, namely :—

"(6) If it is represented to the registrar in materials placed before him by any contributory or creditor that the business of a company is carried on in fraud of its creditors or in fraud of persons dealing with the company or for a fraudulent purpose, he may after giving the company an opportunity of being heard by written order call on the company for information or explanation on matters specified in the order within such time as he may specify in the order and the provisions of sub-sections (2), (3) and (5) of this section shall apply to such order. If upon investigation the registrar is satisfied that any representation on which he has taken action under this sub-section is frivolous or vexatious, he shall disclose the identity of the informant to the company.

(7) The provisions of this section shall apply *mutatis mutandis* to documents which a liquidator is required to file under this Act."

Notes.—We have amended the provisions to be inserted in s. 137 by providing that action by the registrar shall be taken only after the company has been given an opportunity of explanation, as a check on frivolous charges that the registrar shall disclose the identity of his informant if he finds the allegations made to be frivolous or vexatious—*Report of the Select Committee.*

Amendment of section 141, Act VII of 1913.

78. In section 141 of the said Act,—

(*a*) in sub-section (1), after the words "by the Local Government" the words "to the registrar and another copy" shall be inserted ;

(*b*) to sub-section (3) the following proviso shall be added, namely :—

"Provided that the expenses of and incidental to an investigation held in pursuance of clause (iv) of section 138 shall be paid out of the assets of the company and shall be recoverable as an arrear of land-revenue" ; and

(*c*) after sub section (3) the following sub-section ahall be added, namely :—

"(4) The registrar shall keep the copy of the report sent to him with the records of the company in his custody."

Notes—This amendment provides *interalia* for charging the expenses of an investigation undertaken in consequence of a report by the registrar to the company itself—*Notes on Clauses.*

Insertion of new section 141A in Act VII of 1913.

79. After section 141 of the said Act the following section shall be inserted, namely :—

Institution of prosecutions.

"141A. (1) If from any report made under section 138 it appears to the Local Government that any person has been guilty of any offence in relation to the company for which he is criminally liable, the Local Government shall refer the matter to the Advocate General or the Public Prosecutor.

(2) If the officer to whom the matter is referred considers that the case is one in which a prosecution ought to be instituted, he shall cause proceedings to be instituted, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

(3) For the purpose of sub section (2), the expression "agents" in relation to a company shall be deemed to include the bankers and legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(4) Any director, manager or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the leave of the Court be a director of or in any way whether directly or indirectly be concerned in or take part in the management of a company for a period of five years from the date of such conviction.

Notes —It is based on s. 136 of the English Act.

Amendment of section 144, Act VII of 1913.

80. In section 144 of the said Act,—

[illegible] words "not

[illegible]

[illegible] words "not

[illegible] d ;

[illegible] be inserted, namely :—

"and

(iii) any person indebted to the company"; and

[illegible] ls shall be added, namely :—

[illegible] auditor becomes indebted to

[illegible] terminated."

Amendment of section 145, Act VII of 1913.

81. In section 145 of the said Act,—

(a) in sub-section (2),—

(i) after the words "on every balance-sheet" the words "and profit and loss account" shall be inserted ;

(ii) for clause (b) the following clause shall be substituted, namely :—

"(b) whether or not in their opinion the balance-sheet and the profit and loss account referred to in the report are drawn up in conformity with the law" ; and

(iii) in clause (c) after the word "whether" the words "or not" shall be inserted ; and

(iv) after clause (c) the following word and clause shall be added, namely :—

"and

(d) whether in their opinion books of account have been kept by the company as required, by section 130." ;

(b) after sub section (2) the following sub section shall be inserted, namely :—

"(2A) Where any of the matters referred to in clauses (a), (b), (c) and (d) of sub-section (2) is answered in the negative or with a qualification, the report shall state the reason for such answer" ; and

(c) after sub section (3) the following sub-sections shall be added, namely :—

"(4) The auditors of a company shall be entitled to receive notice of and to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and may make any statement or explanation they desire with respect to the accounts.

(5) If any auditors' report is made which does not comply with the requirements of this section, every auditor who is knowingly and wilfully a

party to the default shall be punishable with fine which may extend to one hundred rupees."

Notes.—This amendment supplements the duties of auditors and gives them power of attending meetings to explain the accounts.

Amendment of section 146, Act VII of 1913.

82. In section 146 of the said Act,—

(a) in sub-section (1), after the word "balance-sheets" the words "and profit and loss accounts" shall be inserted; and

(b) to sub-section (2) the following proviso shall be added, namely:—

"Provided that in the case of any public company whether registered before or after the commencement of this Act the trustees for holders of debentures shall have the right conferred by sub-section (1) on holders of preference shares and debentures of a company."

Amendment of section 153, Act VII of 1913

83. In section 153 of the said Act,—

(a) sub-section (3) shall be re-numbered as sub-section (6) and the following sub-sections shall be inserted, namely:—

"(3) An order made under sub-section (2) shall have no effect until a certified copy of the order has been filed with the registrar, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with sub-section (3) the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any [illegible]t or proceeding against a company on such terms as it thinks fit and [illegible] until the application is finally disposed of;"

(b) to sub-section (3) as now re-numbered the following words shall be [a]dded, namely:—

"and for the purposes of this section unsecured creditors who may have [f]iled suits or obtained decrees shall be deemed to be of the same class as other [u]nsecured creditors"; and

(c) after sub-section (3) as now re-numbered the following sub-section [s]hall be added, namely:—

"(7) An appeal shall lie from any order made by the Court exercising [illegible] jurisdiction under this section to the authority authorised to hear [illegible] from the decisions of the Court."

Notes—We have incorporated in s. 153 the provisions of sub-sections (3) [illegible] 4 of s. 153 of the English Act—*Report of the Select Committee*

Insertion of new sections 153A [and] 153B in Act VII of 1913.

84. After section 153 of the said Act the following sections shall be inserted, namely:—

"153A. (1) Where an application is made to the Court under section 153 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it [i]s shown to the Court that the compromise or arrangement has been proposed [for] the purposes of or in connection with a scheme for the reconstruction of

[Pro]visions for facilitating [arrangement]s and compromises.

(3) For the purpose of sub section (2), the expression "agents" in relation to a company shall be deemed to include the bankers and legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(4) Any director, manager or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the leave of the Court be a director of or in any way whether directly or indirectly be concerned in or take part in the management of a company for a period of five years from the date of such conviction.

Notes—It is based on s. 136 of the English Act.

Amendment of section 144, Act VII of 1913.

80. In section 144 of the said Act,—

[illegible] words "not

[illegible] words "not

d;

be inserted,

namely :—

"and

(*iii*) any person indebted to the company"; and

(*iv*) to that sub section the following words shall be added, namely :—

"and if any person after being appointed auditor becomes indebted to the company his appointment shall thereupon be terminated."

Amendment of section 145, Act VII of 1913.

81. In section 145 of the said Act,—

(*a*) in sub-section (2),—

(*i*) after the words "on every balance-sheet" the words "and profit and loss account" shall be inserted ;

(*ii*) for clause (*b*) the following clause shall be substituted, namely :—

"(*b*) whether or not in their opinion the balance-sheet and the profit and loss account referred to in the report are drawn up in conformity with the law" ; and

(*iii*) in clause (*c*) after the word "whether" the words "or not" shall be inserted ; and

(*iv*) after clause (*c*) the following word and clause shall be added, namely :—

"and

(*d*) whether in their opinion books of account have been kept by the company as required, by section 130." ;

(*b*) after sub-section (2) the following sub-section shall be inserted, namely :—

"(2A) Where any of the matters referred to in clauses (*a*), (*b*), (*c*) and (*d*) of sub-section (2) is answered in the negative or with a qualification, the report shall state the reason for such answer" ;

and

(*c*) after sub section (3) the following sub-sections shall be added, namely :—

"(4) The auditors of a company shall be entitled to receive notice of and to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and may make any statement or explanation they desire with respect to the accounts.

(5) If any auditors' report is made which does not comply with the requirements of this section, every auditor who is knowingly and wilfully a

party to the default shall be punishable with fine which may extend to one hundred rupees."

Notes—This amendment supplements the duties of auditors and gives them power of attending meetings to explain the accounts.

Amendment of section 146, Act VII of 1913.

82. In section 146 of the said Act,—

(a) in sub section (1), after the word "balance-sheets" the words "and profit and loss accounts" shall be inserted ; and

(b) to sub-section (2) the following proviso shall be added, namely :—

"Provided that in the case of any public company whether registered before or after the commencement of this Act the trustees for holders of debentures shall have the right conferred by sub-section (1) on holders of preference shares and debentures of a company."

Amendment of section 153, Act VII of 1913

83. In section 153 of the said Act,—

(a) sub-section (3) shall be re-numbered as sub-section (6) and the following sub-sections shall be inserted, namely :—

"(3) An order made under sub-section (2) shall have no effect until a certified copy of the order has been filed with the registrar, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with sub-section (3) the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against a company on such terms as it thinks fit and proper until the application is finally disposed of ;"

(b) to sub-section (3) as now re-numbered the following words shall be added, namely :—

"and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors" ; and

(c) after sub-section (3) as now re-numbered the following sub-section shall be added, namely :—

"(7) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorised to hear appeals from the decisions of the Court."

Notes—We have incorporated in s. 153 the provisions of sub-sections (3) and 4 of s 153 of the English Act.—*Report of the Select Committee*

Insertion of new sections 153A and 153B in Act VII of 1913.

84. After section 153 of the said Act the following sections shall be inserted, namely :—

Provisions for facilitating arrangments and compromises

"153A. (1) Where an application is made to the Court under section 153 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of

(3) For the purpose of sub section (2), the expression "agents" in relation to a company shall be deemed to include the bankers and legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(4) Any director, manager or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the leave of the Court be a director of or in any way whether directly or indirectly be concerned in or take part in the management of a company for a period of five years from the date of such conviction.

Notes—It is based on s. 136 of the English Act.

Amendment of section 144, Act VII of 1913

80. In section 144 of the said Act,—

[illegible] words "not

[illegible] words "not
d;
be inserted,

namely :—

"and

(*iii*) any person indebted to the company", and

[illegible] is shall be added, namely :—
[illegible] auditor becomes indebted to
[illegible] terminated."

Amendment of section 145, Act VII of 1913.

81. In section 145 of the said Act,—

(*a*) in sub-section (2),—

(*i*) after the words "on every balance-sheet" the words "and profit and loss account" shall be inserted ;

(*ii*) for clause (*b*) the following clause shall be substituted, namely :—

"(*b*) whether or not in their opinion the balance-sheet and the profit and loss account referred to in the report are drawn up in conformity with the law" ; and

(*iii*) in clause (*c*) after the word "whether" the words "or not" shall be inserted ; and

(*iv*) after clause (*c*) the following word and clause shall be added, namely :—

"and

(*d*) whether in their opinion books of account have been kept by the company as required, by section 130." ;

(*b*) after sub section (2) the following sub section shall be inserted, namely :—

"(2A) Where any of the matters referred to in clauses (*a*), (*b*), (*c*) and (*d*) of sub-section (2) is answered in the negative or with a qualification, the report shall state the reason for such answer" ;

and

(*c*) after sub section (3) the following sub-sections shall be added, namely :—

"(4) The auditors of a company shall be entitled to receive notice of and to attend any *general meeting* of the company at which any accounts which have been examined or reported on by them are to be laid before the company and may make any statement or explanation they desire with respect to the accounts.

(5) If any auditors' report is made which does not comply with the requirements of this section, every auditor who is knowingly and wilfully a

party to the default shall be punishable with fine which may extend to one hundred rupees."

Notes —This amendment supplements the duties of auditors and gives them power of attending meetings to explain the accounts.

Amendment of section 146, Act VII of 1913.

82. In section 146 of the said Act,—

(*a*) in sub section (1), after the word "balance-sheets" the words "and profit and loss accounts" shall be inserted ; and

(*b*) to sub-section (2) the following proviso shall be added, namely :—

"Provided that in the case of any public company whether registered before or after the commencement of this Act the trustees for holders of debentures shall have the right conferred by sub-section (1) on holders of preference shares and debentures of a company."

Amendment of section 153, Act VII of 1913

83. In section 153 of the said Act,—

(*a*) sub-section (3) shall be re numbered as sub-section (6) and the following sub-sections shall be inserted, namely :—

"(3) An order made under sub-section (2) shall have no effect until a certified copy of the order has been filed with the registrar, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with sub-section (3) the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against a company on such terms as it thinks fit and proper until the application is finally disposed of ;"

(*b*) to sub-section (3) as now re-numbered the following words shall be added, namely :—

"and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors" ; and

(*c*) after sub-section (3) as now re-numbered the following sub-section shall be added, namely :—

"(7) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorised to hear appeals from the decisions of the Court."

Notes.—We have incorporated in s. 153 the provisions of sub-sections (3) and 4 of s 153 of the English Act —*Report of the Select Committee*

Insertion of new sections 153A and 153B in Act VII of 1913.

84. After section 153 of the said Act the following sections shall be inserted, namely :—

Provisions for facilitating arrangments and compromises

"153A. (1) Where an application is made to the Court under section 153 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of

any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as a 'transferor company') is to be transferred to another company (in this section referred to as 'the transferee company'), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters :—

(*a*) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company ;

(*b*) the alloting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person ;

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;

(*d*) the dissolution, without winding up, of any transferor company ;

(*e*) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement ;

(*f*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in. and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the registrar for registration within fourteen days after the completion of [illegible] plying with this sub section, the com- [illegible] is knowingly and wilfully in default [illegible] rupees.

(4) In this section the expression 'property' includes property, rights and powers of every description, and the expression 'liabilities' includes duties.

(5) Notwithstanding the provisions of sub-section (4) of section 153, the expression 'company' in this section does not include any company, other than a company within the meaning of this Act.

Power to acquire shares of shareholders dissenting from schemes or contract approved by majority.

153B. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as 'the transferor company') to another company, whether a company within the meaning of this Act or not (in this section referred to as the 'transferee company'), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than three-fourths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme

or contract the shares of the approving shareholders are to be transferred to the transferee company :

Provided that, where any such scheme or contract has been so approved at any time before the commencement of the Indian Companies (Amendment) Act, 1936, the Court may by order, on an application made to it by the transferee company within two months after the commencement of that Act, authorise notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the Court may by the order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section the expression 'dissenting shareholder' includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract."

Substitution of new section for section 154, Act VII of 1913.

85. For section 154 of the said Act the following section shall be subsitituted, namely :—

Conversion of private company into public company.

"154. (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the provisions of clause (13) of sub-section (1) of section 2, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, file with the registrar a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the form marked II in the Second Schedule.

(2) If default is made in complying with sub-section (1) of this section the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding five hundred rupees.

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in this Act, and thereupon the provisions of this Act shall apply to the company as if it were not a private company :

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to

some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid".

Notes.—This amendment substitutes a section in terms of s. 27 of the English Act for the existing section.—*Notes on Clauses.*

Amendment of section 159, Act VII of 1913.

86. For sub-section (1) of section 159 of the said Act the following sub-section shall be substituted, namely:—

"(*1*) The liability of a contributory shall create a debt payable at the time specified in the calls made on him by the liquidator."

Amendment of section 160, Act VII of 1913

87. To section 160 of the said Act, the following sub-section shall be added, namely:—

"(*3*) For the purposes of this section the surviving coparceners of a contributory who is a member of a Hindu joint family governed by the *Mitakshara* School of Hindu Law shall be deemed to be his legal representatives and heirs."

Amendment of section 163, Act VII of 1913.

88. Section 163 of the said Act shall be re-numbered as sub-section (*1*) of that section and in the section as so re-numbered,—

(*a*) in clause (1), for the words "by leaving the same" the words "by causing the same to be delivered by registered post or otherwise" shall be substituted; and

(*b*) the following sub-section shall be added, namely:—

"(2) The demand referred to in clause (i) of sub-section (1), shall be deemed to have been duly given under the hand of the creditor if it is signed by an agent or legal adviser duly authorised on his behalf, or in the case of a firm if it is signed by such agent or by a legal adviser or anyone member of the firm on behalf of the firm."

Amendment of section 166, Act VII of 1913.

89. In section 166 of the said Act,—

(a) after the words "together or separately", the words, "or by the registrar" shall be inserted, and

(*b*) after clause (*a*) of the proviso the following clause shall be inserted, namely:—

"(*aa*) the registrar shall not be entitled to present a petition for winding up a company—

(i) except on the ground that from the financial condition of the company as disclosed in its balance-sheet or from the report of an inspector appointed under section 138 it appears that the company is unable to pay its debts; and

(ii) unless the previous sanction of the Local Government has been obtained to the presentation of the petition:

Provided that no such sanction shall be given unless the company has first been afforded an opportunity of being heard."

Amendment of section 170, Act VII of 1913.

90. To section 170 of the said Act the following sub-section shall be added, namely:—

"(3) Where the Court makes an order for the winding up of a company it shall, except where a liquidator is appointed simultaneously, forthwith cause intimation thereof to be sent to the official receiver."

Amendment of section 171, Act VII of 1913.

91. In section 171 of the said Act, after the words "has been made" the words "or a provisional liquidator has been appointed" shall be inserted.

Insertion of new section 171A in Act VII of 1913.

92. After section 171 of the said Act the following section shall be inserted, namely :—

Vacancy in the office of liquidator.

"171A. (1) For the purposes of this Act, so far as it relates to the winding up of companies by the Court, the term 'official receiver' means the official receiver attached to the Court, or, if there is no such official receiver, then such person as the Local Government may, by notification in the local official Gazette, appoint for the purpose.

(2) On the making of a winding up order, the official receiver shall become the official liquidator of the company and shall continue to act as such until his further continuance is terminated by an order of the Court.

(3) The official receiver shall as such official liquidator forthwith take into his custody and control all the books, documents and the assets of the company.

(4) The official receiver shall be entitled to such remuneration as the Court shall fix."

Notes.—This clause is designed to secure that a public official shall automatically become the liquidator until some other person is appointed by the Court and can undertake the work—*Notes on Clauses*

Amendment of section 172, Act VII of 1913.

93. For sub section (1) of section 172 of the said Act the following sub-section shall be substituted, namely :—

"(1) On the making of a winding up order it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the registrar a copy of the order within a month from the date of the making of the order."

Amendment of section 175, Act VII of 1913.

94. In section 175 of the said Act,—

(*a*) in sub-section (1), after the words "a person or persons" the words "other than the official receiver" shall be inserted; and

Notes.—The amendment is consequential on amendment made in s 171.

(*b*) to sub-section (2), the following words shall be added, namely :— "but shall before making any such appointment give notice to the company, unless for reasons to be recorded it thinks fit to dispense with notice."

Amendment of section 176, Act VII of 1913.

95 To sub-section (2) of section 176 of the said Act the following words shall be added namely :—

"and until the vacancy is so filled up the official receiver shall be and act as the official liquidator".

Insertion of new sections 177A and 177B in Act VII of 1913.

96. After section 177 of the said Act the following sections shall be inserted, namely :—

Statement of affairs to be made to the liquidator.

"177A. (1) Where the Court has made a winding up order or appointed an official liquidator provisionally, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official liquidator a statement as to the affairs of the company verified by an affidavit and containing the following particulars, namely :—

(*a*) the assets of the company, stating separately the cash balance in hand and at the bank, if any;

(*b*) the debts and liabilities;

(*c*) the names, residences and occupations of the creditors stating separately the amount of secured debts and unsecured debts, and in the case of secured debts particulars of the securities, their value and the dates when they were given;

(*d*) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised therefrom.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary, manager or other chief officer of the company, or by [illegible] mentioned as the officia [illegible] nay require to submit and [illegible]

(*a*) wh [illegible];

(*b*) who have taken part in the formation of the company at any time within one year before the relevant date;

(*c*) who are in the employment of the company, or have been in the [illegible] of

[illegible] e said year was, an officer of the com-

[illegible] within twenty-one days from the rele- [illegible] the official liquidator or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, knowingly and wilfully makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code* and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(8) In this section the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

Notes—This section with slight alteration corresponds with s. 181 of the English Act.

Statement by liquidator.

177B. (1) In a case where a winding up order is made, the official liquidator shall, as

* XLV of 1860.

soon as practicable after receipt of the statement to be submitted under section 177A, and not later than four, or with the leave of the Court, six months from the date of the order, or in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

(*a*) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately under the heading of assets particulars of—

(*i*) cash and negotiable securities ;
(*ii*) debts due from contributories ;
(*iii*) debts due to and securities, if any, available to the company,
(*iv*) movable and immovable properties belonging to the company ;
(*v*) unpaid calls ; and

(*b*) if the company has failed, as to the causes of the failure ; and
(*c*) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court."

Notes—It corresponds with section 182 of the English Act.

Amendment of section 178, Act VII of 1913.

97. In section 178 of the said Act,—

(*a*) in sub-section (1), after the word "liquidator" the words "whether appointed provisionally or not" shall be inserted ; and
(*b*) for sub-section (2) the following sub-section shall be instituted, namely :—

"(2) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company."

Insertion of new section 178A in Act VII of 1913.

98. After section 178 of the said Act, the following section shall be inserted, namely :—

Committee of Inspection in compulsory winding up.

"178A. (1) The official liquidator shall within a month from the date of the order for the winding up of a company convene a meeting of the creditors of the company (as ascertained from the books and documents of the company) for the purpose of determining whether or not a committee of inspection shall be appointed to act with the liquidator and who are to be members of the committee, if appointed.

(2) The official liquidator shall within a week from the date of the creditor's meeting convene a meeting of the contributories to consider the decision of the creditors and to accept the same with or without modifications.

(3) If the contributories do not accept the decision of the creditors in its entirety, it shall be the duty of the official liquidator to apply to the Court for directions as to whether there shall be a committee of inspection and, if so, what shall be the composition of the committee, and who shall be members thereof,

(4) A committee of inspection appointed under this section shall consist of not more than twelve members being creditors and contributories of the company or persons holding general or special powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.

(5) The committee of inspection shall have the right to inspect the accounts of official liquidator at all reasonable times

(6) The committee shall meet at such times as they may from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary

(7) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(8) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(9) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(10) A member of the committee may be removed by an ordinary resolution at a meeting of creditors if he represents creditors, or of contributories if he represents contributories, of which seven days' notice has been given, stating the object of the meeting

(11) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(12) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee."

Notes.—This section is based on sections 198 and 199 of the English Act.

Amendment of section 182, Act VII of 1913.

99. (1) Section 182 of the said Act shall be renumbered as sub-section (1) of that section and to the section as so re-numbered the following sub-sections shall be added, namely :—

"(2) Every official liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as such liquidator.

(3) The account shall b[illegible]

[illegible] information as the Court may require, and the Court may at any time require the production of and inspect any books or accounts kept by the liquidator.

(5) When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the registrar for filing, and each copy shall be open to the inspection of any creditor, or of any person interested."

Notes.—They reproduce section 195 of the English Act—*Notes on Clauses.*

Amendment of section 183, Act VII of 1913.

100. To sub-section (1) of section 183 of the said Act, the words "or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection" shall be added at the end.

Amendment of section 188, Act VII of 1913

101. In section 188 of the said Act, the words "the Bank of Bengal, the Bank of Madras or the Bank of Bombay, as the case may be, or any branch thereof respectively to" shall be omitted and after the words "official liquidator" where they first occur the words "in any scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934,"* shall be inserted.

Amendment of section 189, Act VII of 1913.

102. In section 189 of the said Act, for the words "the Bank of Bengal, the Bank of Madras or the Bank of Bombay or any branch thereof respectively" the words "the Bank where the liquidator of the Company may have his account" shall be substituted.

Amendment of section 203, Act VII of 1913.

103. To section 203 of the said Act after clause (3) the following words shall be added, namely:—

"and the expression 'resolution for voluntarily winding up' when used hereafter in this Part means a resolution passed under clause (1), clause (2) or clause (3) of this section".

Amendment of section 204, Act VII of 1913

104. In section 204 of the said Act, for the words "authorising the winding up" the words "for voluntarily winding up" shall be substituted.

Substitution of new sections for sections 207 to 219, Act VII of 1913

105. For sections 207 to 219 of the said Act, both included, the following sections and headings shall be substituted, namely :—

Declaration of solvency

"207. (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, to make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding three years, from the commencement of the winding up.

(2) Such declaration shall be supported by a report of the company's auditors on the company's affairs and shall have no effect for the purposes of this Act unless it is delivered to the registrar for registration before the date mentioned in sub-section (1) of this section.

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as a 'members' voluntary winding up', and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as 'a creditors' voluntary winding up'.

Notes —This is section 230 of the English Act of 1929.

Members' voluntary winding up.

Provisions applicable to a members' voluntary winding up.

208. The provisions contained in sections 208A to 208E both inclusive, shall apply in relation to a member's voluntary winding up.

Notes.—This is section 231 of the English Act.

* II of 1934.

Power of company to appoint and fix remuneration of liquidators.

208A. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

Notes.—This is section 232 of the English Act.

Power to fill vacancy in office of liquidator.

208B. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Notes.—This is section 233 of the English Act. *Vide Hunter* v. *Damudar Dass*, 181 Ind. Cas 508=46 A. 759=22 A L J 719.

Power of liquidator to accept shares, etc., as consideration for sale of property of company

208C. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called 'the transferee company'), the liquidator of the first-mentioned company (in this section called 'the transferor company') may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in [illegible] receive any other benefit from

[illegible] this section shall be binding on

[illegible], any who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereafter provided.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary [illegible] idators, but if an order is made within a [illegible] by or subject to the supervision of the Court, [illegible] be valid unless sanctioned by the Court.

(6) The provision of the Indian Arbitration Act, 1899,* other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

Notes.—This is section 234 of the English Act and repealed section 213 of this Act.

Duty of liquidator to call general meeting at end of each year.

208D. (1) In the event of the winding up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or as soon thereafter as may be convenient within ninety days of the close of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the liquidation.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one hundred rupees.

Notes.—This is section 235 of the English Act.

Final meeting and dissolution.

208E. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in sub-section (1) of section 206 for publication of a notice under that sub-section.

(3) Within one week after the meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the said return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns mentioned in sub-section (3) shall forthwith register them and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

[illegible] the liquidator or of any [illegible], make an order deferring [illegible] take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within twenty-one days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Notes.—This is section 236 of the English Act.

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* IX of 1899.

and a meetiong of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by [illegible]t specifying the time, [illegible] before the meeting [illegible] the publication of a notice under that sub section.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues:

Provided that, if a quorum (which for the purposes of this section shall be two persons) is not present at either such meeting, the liquidator shall, in lieu of such return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall, in respect of that meeting be deemed to have been complied with

(4) The registrar on receiving the account and in respect of each such meeting either of the returns mentioned in sub-section (3) shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within ten days after making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails to do so he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Notes—The is section 245 of the English Act.

Members' or creditors' voluntary winding up.

Provisions applicable to every voluntary winding up.

210. The provisions contained in sections 211 to 218, both inclusive, shall apply to every voluntary winding up whether a members' or a creditors' winding up.

Notes—This is section 246 of the English Act.

Distribution of property of company.

211. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Notes.—This is section 247 of the English Act

Powers and duties of liquidator in voluntary winding up.

212. (1) The liquidator may—

(a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection, exercise any of the powers given by clauses (d), (e), (f) and (h) of section 179 to a liquidator in a winding up. The exercise by the liquidator of the powers given

by this clause shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers;

(*b*) without the sanction referred to in clause (*a*), exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(*c*) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(*d*) exercise the power of the Court of making calls;

(*e*) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination by any number not less than two.

Notes —This is section 248 of the English Act.

Power of Court to appoint and remove liquidator in voluntary winding up.

213. (1) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

Notes.—This is section 249 of the English Act and clauses (VIII) and (IX) of the old section 207.

Notice by liquidator of his appointment.

214. (1) The liquidator shall, within twenty-one days after his appointment, deliver to the registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for everyday during which the default continues.

Notes —This is section 250 of the English Act and section 208 which has been repealed.

Arrangement when binding on creditors

215. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Notes —This section corresponds to section 251 of the English Act and the old section 212 which has been repealed

Power to apply to Court to have questions determined of powers exercised.

216. (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The liquidator or any creditor or contributory may apply for an order setting aside any attachment, distress or execution put into force agai the estate or effects of the company after the commencement of the winding

Such application shall be made—

(*a*) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court, and

(*b*) if the attachment, distress and execution is levied or put into force in any other Court, to the Court having jurisdiction to wind up the company.

(3) The Court, if satisfied that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may exceed wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

Notes—This is section 252 of the English Act and sub-sections (1) & (3) of this section corresponds to sub-section (1) & (2) of the repealed section 215.

Cost of voluntary winding up.

217. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of company in priority to all other claims.

Notes.—This is section 254 of the English Act.

Saving for rights of creditors and contributories.

218. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up."

Amendment of section 230, Act VII of 1913.

106. In sub-section (1) of section 230 of the said Act,—

(*a*) in clause (*b*) the word "and" shall be omitted; and

(*b*) after clause (*c*) the following clauses shall be added, namely :—

[illegible]

maintained by the company ; and

(*f*) the expenses of any investigation held in pursuance of clause (iv) of section 138 of this Act."

Notes.—It is equitable that the compensation payable under the Workmen's Compensation Act should not be treated as an ordinary debt provable in the winding up but should have priority—*Notes on Clauses.*

Insertion of new section 230A in Act VII of 1913.

107. After section 230 of the said Act the following section shall be inserted, namely :—

Disclaimer of property.

"230A. (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he had endeavoured to sell or has taken possession of the property, or exercised any act of ownership in [illegible] ...ve of the Court and subject to the provisions [illegible] by him, at any time within twelve months [illegible] ...inding up or such extended period as may be [illegible] property :

[illegible] ...property has not come to the knowledge of [illegible] after the commencement of the winding up,

• VI of 1923.

the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks, just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the liquidator entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the the person therein named in that behalf without any conveyance or assignment for the purpose :

Provided that, where the property disclaimed is of a leasehood nature, the Court shall not make a vesting order in favour of any person claiming under the company whether as under-lessee or as mortgagee except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ; or

(*b*) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at the date ;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's

covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up"

[illegible] English Act, which gives a liqui- [illegible] ıkruptcy, to disclaim the land [illegible] property which is unsaleable"

Amendment of section 232, Act VII of 1913.

108. In sub-section (1) of section 232 of the said Act, after the words "estate or effects" the words "or any sale held without leave of the Court of any of the properties" shall be inserted.

Amendment of section 235, Act VII of 1913

109. In section 235 of the said Act,—

(*a*) in sub-section (1), after the words "or of any creditor or contributory" the words "made within three years from the date of the first appointment of a liquidator in the winding up or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer," shall be inserted; and

(*b*) sub-section (3) shall be omitted.

Substitution of new section for section 237 in Act VII of 1913

110. For section 237 of the said Act, the following section shall be substituted, namely:—

Prosecution of delinquent directors.

"237. (1) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the registrar.

[illegible] course of a voluntary winding up [illegible] or other officer, or any member of [illegible] in relation to the company for [illegible] orthwith report the matter to the registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator relating to the matter in question, as he may require

(3) Where any report is made under sub-section (2) to the registrar, he may, if he thinks fit, refer the matter to the Local Government for further inquiry, and the Loca[illegible] the matter and may, if they think it [illegible] r conferring on any person designatec [illegible] ose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If on any report to the registrar under sub-section (2) it appears to [illegible] by him, [illegible] the pre- [illegible] against the offender.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the

company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the registrar, the Court, may on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report has been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall place the papers before the Advocate General or the public prosecutor and if advised to do so institute proceedings, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give :

Provided that no prosecution shall be undertaken without first giving the accused person an opportunity of making a statement in writing to the registrar and of being heard thereon.

For the purposes of this sub section, the expression 'agent' in relation to a company shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If any person fails or neglects to give assistance in manner required by sub-section (6), the Court may, on the application of the registrar, direct that person to comply with the requirements of the said sub-section, and where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the *liquidator personally.*"

Notes—This section substitutes the more adequate provisions of section 277 of the English Act for the old section.

Insertion of new section 238A in Act VII of 1913.

111. After section 238 of the said Act the following section shall be inserted, namely :—

Penal provisions.

"238A. (1) If any person, being a past or present director, managing agent, manager and other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up—

(*a*) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company ; or

(*b*) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up ; or

(*c*) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up ; or

(*d*) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of one hundred rupees or upwards or conceals any debt due to or from the company ; or

(e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards ; or

(f) makes any material omission in any statement relating to the affairs of the company ; or

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof ; or

(h) after the commencement of the winbing up prevents the production of any book or paper affecting or relating to the property or affairs of the company ; or

(i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or paper affecting or relating to the property or affairs of the company , or

(j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company , or

(k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company , or

(l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses ; or

(m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for ; or

(n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ; or

(o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company ; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up :

he shall be punishable, in the case of the offences mentioned respectively in [illegible] [illegible], with imprisonment for a term not [illegible] other offence, with imprisonment [illegible]

[illegible] under any of clauses [illegible] he had no intent to [illegible] and (j), if he proves [illegible] company or to defeat [illegible]

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (o) of sub-section (1) every

person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of, in such circumstances as aforesaid shall be punishable with imprisonment for a term not exceeding three years."

Notes.—"This section follows section 271 of the English Act in providing for the punishment of offences antecedent to or in the course of a winding up."—*Notes on Clauses.*

Amendment of section 244, Act VII of 1913.

112. In section 244 of the said Act,—

(*a*) in sub-section (1),—

(*i*) for the words "at such intervals as may be prescribed" the words "once in each year and at intervals of not more than twelve months" shall be substituted ; and

(*ii*) for the words "file with the registrar" the words "file in Court or with the registrar, as the case may be" shall be substituted ;

(*b*) after sub-section (3) the following sub section shall be added, namely :—

"(4) When the statement is filed in Court a copy shall simultaneously be filed with the registrar and shall be kept by him along with the other records of the company.

Insertion of new section 244A in Act VII of 1913

113. After section 244 of the said Act the following section shall be inserted, namely :—

Payment of liquidator into bank.

"244A. (1) Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as may be prescribed, pay the money received by him into a scheduled bank as defined in clause (*e*) of section 2 of the Reserve Bank of India Act, 1934 :*

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Court may authorise the liquidator to make his payments into or out of such other bank as the Court may select and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the Court may in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up shall open a special banking account and pay all sums received by him as liquidator into such account."

Notes —It inserts a section based on section 194 of the English Act.

Amendment of section 246

114. In sub-section (1) of section 246 of the said Act, after the words "Courts subordinate thereto," the words "and for [illegible] members and cre- [illegible] eetings of creditors [illegible] 153 of this Act," [illegible] ıpany" the following words shall be inserted, namely :—

"and generally for all applications to be made to the Court under the provisions of this Act".

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* II of 1934.

(*iv*) an address in British india where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof in the English language certified in the prescribed manner, can be inspected ;

(*v*) the date on which and the country in which the company was incorporated ;

(*vi*) whether the company has established a place of business in British India and, if so, the address of its principal office in British India :

Provided that the provisions of sub-clauses (i), (ii) and (iii) of this clause shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business ;

(*b*) subject to the provisions of this section, state the matters specified in sub-section (*IA*) of section 93 and set out the reports specified in that section :

Provided that—

(*i*) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed, and

(*ii*) in section 93 of this Act a reference to the articles of the company shall be deemed to be a reference to the constitution of the company.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he was not cognisant thereof, or

(*b*) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or

(*c*) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to a[illegible] xcused :

[illegible] prospectus a statement with [illegible]) of sub section (1) of section 93, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

Notes—It reproduces section 355 of the English Act.

Restriction on canvassing for sale of shares.

277C. (1) It shall not be lawful for any person to go from house to house offering shares of a company incorporated outside India for subscription or purchase to the public or any member of the public.

(2) In this sub section the expression 'house' shall not include an office used for business purposes

(3) Any person acting in contravention of this section shall be liable to a fine not exceeding rupees one hundred.

Notes.—It reproduces a part of section 356 of the English Act.

Registration of charges

277D. The provisions of sections 109 to 117, both inclusive, and 120 to 125, both inclusive, shall extend to charges on properties in British India which are created and to charges on property in British India which is acquired after the commencement of the Indian Companies (Amendment) Act, 1936, by a company incorporated outside British India which has an established place of business in British India.

Notes—It reproduces section 90 of the English Act.

Notice of appointment of receiver.

277E. The provisions of sections 118 and 119 shall *mutatis mutandis* apply to the case of all companies incorporated outside British India but having an established place of business in British India and the provisions of section 130 shall apply to such companies to the extent of requiring *them to keep at their principal place of business in British India the books of* account required by that section with respect to money received and expended, sales and purchases made, and assets and liabilities in relation to its business in British India."

Insertion of new sections 277F, 277G, 277H, 277I, 277J, 277K, 277L, 277M and 277N as Part XA of Act VII of 1913.

119. After Part X of the said Act as amended by this Act the following shall be inserted, namely:—

"PART XA.

Banking Companies.

Definition of banking company.

277F. A 'banking company' means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, namely:—

(1) the borrowing, raising or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, travellers' cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others; the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the collecting and transmitting of money and securities;

(2) acting as agents for Governments or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent, including the power to act as attorneys and to give discharges and receipts,

(3) contracting for public and private loans and negotiating and issuing the same;

(4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State,

Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue ;

(5) carrying on and transacting every kind of guarantee and indemnity business ;

(6) Promoting or financing or assisting in promoting or financing any ... undertaking or industry either existing or new, and *developing or form-* ... nstrumentality of syndicates or otherwise ;

... lease, exchange, hire or otherwise of any ... and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition or which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability ;

(8) managing, selling and realising all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims ;

(9) acquiring and holding and generally dealing with any property and any right, title or interest any property movable or immovable which may form part of the security for any loans or advance or which may be connected with any such security ;

(10) undertaking and executing trusts ;

(11) undertaking the administration of estates as executor, trustee or otherwise ,

(12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company ;

(13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons , granting pensions and allowances and making payments towards insurance ; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object ;

(14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company ;

(15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company ;

(16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section ;

(17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.

Limitation of activities of banking company.

277G. (1) No company formed after the commencement of the Indian Companies (Amendment) Act, 1936, for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business the word 'bank', 'banker' or 'banking' *shall be registered* under this Act, unless the memorandum limits the objects of the company to the carrying on of the business of accepting deposits of money on current account or otherwise subject to withdrawal by cheque, draft or otherwise along with some or all of the forms of business specified in section 277F.

(2) No banking company whether incorporated in or outside British India shall after the expiry of two years from the commencement of the said Act carry on any form of business other than those specified in section 277F :

Provided that the Governor General in Council may, by notification in the *Gazette of India*, specify in addition to the businesses set forth in clauses (1) to (17) of section 277F other forms of business which it may be lawful under this section for a banking company to engage in.

Banking company not to employ managing agent.

277H. No banking company shall after the expiry of two years from the commencement of the Indian Companies (Amendment) Act, 1936, employ or be managed by a managing agent other than a banking company for the management of the company.

Restriction on commencement of business by banking company.

277I. Notwithstanding anything contained in section 103, no banking company incorporated under this Act after the commencement of the Indian Companies (Amendment) Act, 1936, shall commence business, unless shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid-up capital has been filed with the registrar.

Prohibition of charge on unpaid capital.

277J. No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

Reserve fund.

277K. (1) Every banking company shall, after the commencement of the Indian Companies (Amendment) Act, 1936, maintain a reserve fund.

(2) Every banking company shall out of the declared profits of each year and before any dividend is declared transfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid up capital.

(3) A banking company shall invest the amount standing to the credit of its reserve fund in Government securities or in securities mentioned or referred to in section 20 of the Indian Trusts Act, 1882,* or keep deposited in a special account to be opened by the company for the purpose in a scheduled bank as defined in clause (*e*) of section (2) of the Reserve Bank of India Act, 1934:†

Provided that the provision of the sub-section shall not apply to a banking company incorporated before the commencement of the Indian Companies (Amendment) Act, 1936, till after the expiry of two years from the commencement of the said Act.

Cash reserve.

277L. (1) Every banking company shall maintain by way of cash reserve in cash a sum equivalent to at least one and a half per cent. of the time liabilities and five per cent. of the demand liabilities of such company and shall file with the registrar before the tenth day of every month a statement of the amount so held on the Friday of each week of the preceding month with particulars of the time and demand liabilities of each such day.

(2) For the purposes of sub-section (1) 'demand liabilities' means liabilities which must be met on demand, and 'time liabilities' means liabilities which are not demand liabilities.

(3) Nothing in this section or in section 277K shall apply to a scheduled bank as defined in clause (*e*) of section 2 of the Reserve Bank of India Act, 1934.†

If default is made in complying with the requirements of section 277G, section 277H, section 277J section 277K or section 277M or with the re-

* 11 of 1882. † II of 1934.

quirements of this section as to the maintenance of a cash reserve, every director or other officer of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues, and if default is made in complying with the requirements of this section as to the filing of the statement referred to in sub-section (1), to a fine not exceeding one hundred rupees for every day during which the default continues

Restriction on nature of subsidiary companies.

277M. A banking company shall not form or hold shares in any subsidiary company except a subsidiary company of its own formed for the purpose of undertaking and executing trusts, undertaking the administration of estates as executor trustee or otherwise and such other purposes set forth in section 277F as are incidental to the business of accepting deposits of money on current account or otherwise.

Power of Court to stay proceedings.

277N (1) The Court may on the application of a banking company which is temporarily unable to meet its obligations make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper and may from time to time extend the period.

(2) No such application shall be maintainable unless accompanied by a report of the registrar:

Provided, however, the Court may, for sufficient reasons, grant interim relief, even if the application is not accompanied by such report.

(3) The registrar shall for the purposes of his report be entitled at the cost of the company to investigate the financial condition of the company and for such purpose to have the books and documents of the company examined by an accountant holding a certificate issued under section 144."

Substitution of new section 281 in Act VII of 1913.

120 For section 281 of the said Act the following section shall be substituted, namely:—

Power of Court to grant relief in certain cases.

"281. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the Court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are the following:—

(a) directors of a company;

(b) managers and managing agents of a company;

(c) officers of a company;

(*d*) persons employed by a company as auditors, whether they are or are not officers of the company."

Insertion of new sections 282A and 282B in Act VII of 1913

121. After section 282 of the said Act the following sections shall be inserted, namely :—

Penalty for wrongful withholding of property.

"282A. Any director, managing agent, manager or other officer or employee of a company who wrongfully obtains possession of any property of a company, or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and authorised by this Act, shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine not exceeding one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied or in default to suffer imprisonment for a period not exceeding two years.

Penalty for misapplication of securities by employers.

282B. (1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company in a special account to be opened by the company for the purpose in a scheduled bank as defined in clause (*e*) of section 2 of the Reserve bank of India Act, 1934,* and no portion thereof shall be utilised by the company except for the purposes agreed to in the contract of service.

(2) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund after the commencement of the Indian Companies (Amendment) Act, 1936, shall be invested, and shall be invested only in securities mentioned or referred to in clauses (*a*) to (*e*) of section 20 of the Indian Trusts Act, 1882,† and all moneys belonging to such fund at the commencement of the said Act which are not so invested shall be invested in such securities by annual instalments not exceeding ten in number and not less in amount in any year than one-tenth of the whole amount of such moneys.

(3) Notwithstanding anything to the contrary in the rules of any fund to which sub-section (2) applies or in any contract between a company and its employees, no employee shall be entitled to receive in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (2) interest at a rate exceeding the rate of interest yielded by such investment.

(4) An employee shall be entitled on request made in this behalf to the company to see the bank's receipt for any money or security such as is referred to in sub-section (1) and sub-section (2)

(5) Any director, managing agent, manager or other officer of the company who knowingly contravenes or permits or authorises the contravention of the provisions of this section shall be liable on conviction to a fine not exceeding five hundred rupees.

Amendment of first schedule, Act VII of 1913.

122. In the first Schedule to the said Act, in Table A,—

*II of 1934. † II of 1882.

Divided into....................................	shares of Rs. .... each. shares of Rs. .... each. shares of Rs. .... each. shares of Rs. .... each.
Amount (if any) of above capital which consists of redeemable preference shares.	
The date on or before which these shares are, or are liable, to be redeemed	
Names, descriptions and addresses of directors or proposed directors and managers or proposed managers, and any provision in the articles, or in any contract, as to appointment of and remuneration payable to directors or managers.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. ——shares of Rs.......fully paid. 2. ——shares upon which Rs ....per share credited as paid. 3. Debenture Rs .... 4. Consideration.
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company. Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price . Rs .... Cash . Rs... .... Shares . Rs .... Debentures . Rs .... Goodwill . Rs ....
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ; or Rate of the commission........................	Amount paid. Amount payable Rate per cent.

The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses.	Rs....................
Amount paid or intended to be paid to any promoter.	Name of promoter............... Amount Rs.....................
Consideration for the payment.	Consideration .—
Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the company or contracts, other than contracts appointing or fixing the remuneration of a managing director or managing agent, entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any)	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the amounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been	

Divided into..................................	shares of Rs. .... each. shares of Rs. .... each. shares of Rs. .... each. shares of Rs. .... each.
Amount (if any) of above capital which consists of redeemable preference *shares.*	
The date on or before which these shares are, or are liable, to be redeemed	
Names, descriptions and addresses of directors or proposed directors and managers or proposed managers, and any provision in the articles, or in any contract, as to appointment of and remuneration payable to directors or *managers.*	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as *fully* or partly paid up otherwise than in cash.	1. ——shares of Rs.......fully paid. 2. ——shares upon which Rs ....per share credited as paid. 3. Debenture Rs .... 4. *Consideration.*
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or *acquired* by the company. Amount (in cash, *shares or debentures*) payable to each separate *vendor.*	
Amount (if any) paid *or payable (in* cash or shares or debentures) *for any* such property, specifying *amount* (if any) paid or payable for goodwill.	Total purchase price . Rs .... Cash . Rs............. Shares . Rs .... Debentures . Rs .... Goodwill . Rs ....
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ; or Rate of the commission........................	Amount paid. Amount payable *Rate* per cent.

The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses.	Rs..................
Amount paid or intended to be paid to any promoter.	Name of promoter............... Amount Rs.....................
Consideration for the payment.	Consideration .—
Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the company or contracts, other than contracts appointing or fixing the remuneration of a managing director or managing agent, entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the amounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been	

carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.	

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing).
Date

FORM II

THE INDIAN COMPANIES ACT, 1913.

STATEMENT IN LIEU OF PROSPECTUS

filed by

....LIMITED,

pursuant to sub-section (1) of section 154 of the Indian Companies Act, 1913
Presented for filing by

The nominal share capital of the Company.	Rs. ....
Divided into	Shares of Rs.
Amount (if any) of above capital which consists of redeemable preference shares.	
The date on or before which these shares are, or are liable, to be redeemed	
Names, descriptions and addresses of Directors or proposed Directors and Managers or proposed Managers, and any provision in the Articles, or in any contract, as to appointment of and remuneration payable to Directors or Managers	
If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1. Shares of Rs. fully paid. 2. Shares upon which Rs. per share credited as paid 3. Debenture Rs. 4. Consideration.

Names and addresses of vendors of property (1) purchased or acquired by the Company within the two years preceding the date of this Statement or (2) agreed or proposed to be purchased or acquired by the Company.	
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill.	Total purchase price ... Rs................................. Cash ... Rs................................. Shares ... Rs................................. Debentures Rs................................. Goodwill ... Rs.................................
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company; or rate of the commission	Amount paid. Amount payable. Rate per cent
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Unless more than two years have elapsed since the date on which the Company was entitled to commence business :— Estimated amount of preliminary expenses Amount paid or intended to be paid to any promoter. Consideration for the payment. Dates of and parties to every material	Rs. Name of promoter. Amount Rs. Consideration.
contract (except contracts entered into in the ordinary course of the business intended to be carried on by the Company or contracts, other than contracts appointing or fixing the remuneration of a Managing Director or Managing Agent, entered into more than two years before the delivery of this statement).	
Times and place at which the contracts or copies thereof may be inspected.	

Names and addresses of the Auditors of the Company.	
Full particulars of the nature and extent of the interest of every Director in the promotion of or in the property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be acquired by the Company or where the interest of such a Director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a Director, or otherwise for services rendered by him or by the firm in connection with the promotion of the formation of the Company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.	
(Signatures of the persons above named as Directors or proposed Directors or of their agents authorised in writing).	

Dated the *day of* ".

Amendment of Third Schedule, Act VII of 1913.

124. In the Third Schedule to the said Act,—

(*a*) for Form F the following form shall be substituted :—

"FORM F.

(*See* section 132).

....LIMITED.

Balance-Sheet as at..*19* .

CAPITAL AND LIABILITIES.	Rs.	As	P.	Rs.	As	P.	PROPERTY AND ASSETS.	Rs.	As.	P.	Rs.	As	P.
CAPITAL— Authorised Capital......shares of Rs......each. (Distinguishing between the various classes of Capital).	...	...	...				FIXED CAPITAL EXPENDITURE— (Distinguishing as far as possible between expenditure upon goodwill, land, buildings, leaseholds, railway sidings, plant, machinery, furniture, development of property, patents, trade-marks and designs, interest paid out of Capital during construction, etc., and stating in every case the original cost and the additions thereto and deductions therefrom during the year, and the total Depreciation written off under each head. Where sums have been written off on a reduction of capital or a revaluation of assets every balance-sheet after the first balance-sheet subsequent to the reduction or revaluation shall show the reduced figures, with the *date* of and the amount of the reduction made).				...	...	...
Issued Capital..shares of *Rs*...each	...	...	...										
(*i*) Shares issued as fully paid up pursuant *to any contract* without payments being received in cash...shares of Rs... each.													
(*ii*) Shares issued for payments in cash...shares of Rs...each. Subscribed Capital......shares of Rs......each.	...	...	...										

CAPITAL AND LIABILITIES—*contd.*	Rs.	As	P.	Rs.	As	P
CAPITAL—*contd*						
Amount called up at Rs...per share	....	......	......			
Less—Calls unpaid—						
(*i*) due from Managing Agents...	....	......	......			
(*ii*) due from others	....	......	......			
Add—Forfeited shares (amount paid up)						
Note—Where circumstances permit issued and subscribed capital and amount called up may be shown as one item, *e. g.*						
Issued and Subscribed Capital... shares of Rs......each, Rs......paid up.	....	......	......	....	......	......
RESERVES						
DEBENTURES stating the nature of security				....	......	......
ANY SINKING FUND				....	......	......
ANY OTHER FUND CREATED OUT OF NET PROFITS, including any development fund				....	......	......
ANY PENSION OR INSURANCE FUND				....	......	......
PROVISION FOR BAD AND DOUBTFUL DEBTS...				....	......	......
				....	......	......
LOANS—						
(*a*) Secured—						
(*i*) loans on mortgages or fixed assets	....	......	......			
(*ii*) loans on debentures ...	....	......	......			
(*iii*) loans from banks, stating the nature of security ...	....	......	......			
(*iv*) liabilities to subsidiary companies	....	......	......			

PROPERTY AND ASSETS—*contd.*	Rs.	As.	P.	Rs.	As	P.
FIXED CAPITAL EXPENDITURE—*contd.*						
PRELIMINARY EXPENSES ...				....	......	......
COMMISSION OR BROKERAGE ...				....	......	......
(Commission or Brokerage paid for underwriting or placing or subscribing shares or debentures until written off)						
DISCOUNT ALLOWED on the issue of shares or so much as has not been written off at the date of the balance-sheet.				....	......	......
STORES AND SPARE PARTS ...				....	......	......
LOOSE TOOLS...				....	......	......
LIVE-STOCK AND VEHICLES ...				....	......	......
STOCK IN TRADE				....	......	......
(Stating mode of valuation, *e.g.*, cost or market value.)						
BILLS OF EXCHANGE				....	......	......
BOOK DEBITS				....	......	......
(Distinguishing between those considered good and in respect of which the company is fully secured and those considered good for which the company holds no security other than the debtor's personal security, and distinguishing between debts considered good and debts considered doubtful or bad. Debts due by directors or other officers of the						

CAPITAL AND LIABILITIES—*contd.*	Rs.	As.	P.	Rs.	As.	P.
LOANS—*contd.*						
(*a*) Secured—*contd.*						
(*v*) other secured loans, stating the nature of security	......	......	......			
(*vi*) interest accrued on mortgages, debentures or other secured loans	......	......	......			
(*b*) Unsecured—						
(*i*) loans from banks	......	......	......			
(*ii*) fixed deposits	......	......	......			
(*iii*) short-term loans	......	......	......			
(*iv*) advances by directors or managers and managing agents ...	......	......	......			
(*v*) interest accruing but not due and interest accrued and due ...	......	......	......			
(*vi*) liabilities to subsidiary companies	......	......	......	......	......	......
UNCLAIMED DIVIDENDS				......	......	......
LIABILITIES—						
For Goods supplied	......	......	......			
For Expenses.	......	......	......			
For Acceptances	......	......	......			
For Other Finance	......	......	......	......	......	......
ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS				......	......	......

PROPERTY AND ASSETS—*contd.*	Rs.	As.	P.	Rs.	As.	P.
BOOK DEBITS—*contd.*						
company or any of them either severally or jointly with any other *persons to be separately stated.*)						
ADVANCES				......	......	...
(Recoverable in cash or in kind or for value to be received, *e.g.*, Rates, Taxes, Insurance, etc., showing separately—						
(*i*) loans given to subsidiary companies.	......	......	......			
(*ii*) loans including temporary advances made at any time during the year to directors or managers of the company. ...	......	......	......			
INVESTMENTS				......	......	...
(Showing nature of investments and mode of valuation, *e.g.*, Cost or Market value and distinguishing—	......					
(*i*) investments in Government or trust securities	......	......	......			
(*ii*) investments in shares, debentures or bonds (showing separately shares fully paid up and partly paid up)	......	......	......			
(*iii*) investments in shares, debentures or bonds of subsidiary companies	......	......	......			
(*iv*) immovable properties ...	......	......	......			

CAPITAL AND LIABILITIES—*contd.*	Rs.	As.	P.	Rs.	As.	P.
LOANS—*contd.*						
(For the portion for which value has still to be given, *e.g.*, in the case of the following classes of companies— Newspaper, Fire Insurance, Theatre, Club, Banking, Steamship Companies, etc.)						
PROFIT AND LOSS				...	...	...
				..	...	...
CONTINGENT LIABILITIES—						
Claims against the company not acknowledged as debts ...	...	...	...			
Money for which the company is contingently liable ...	...	...	...			
(Showing separately the amount of any guarantees given by the company on behalf of directors or officers of the company)						
Arrears of Cumulative Preference Dividends	...	...	...			

PROPERTY AND ASSETS—*contd.*	Rs.	As.	P.	Rs.	As.	P.
BOOK DEBITS—*contd.*						
INTEREST ACCRUED ON INVESTMENTS				...	...	...
CASH AND OTHER BALANCES ...				...	...	...
Amount in hand	...	...	...			
Balances with Agents and Bankers (in detail showing whether on deposit or current account, etc) ...	...	...	...			
Profit and Loss	...	...	...			

"The information required to be given under any of the items or sub-items in this Form if not included in the Balanec-Sheet itself shall be furnished in a separate Schedule or Schedules to be attached to and to form part of the Balance-Sheet";

(*b*) after Form G the following shall be inserted as Form H, namely :—
"FORM H.

(*See section* 277.)

INFORMATION TO BE SUPPLIED IN OR IN ADDITION TO THE INFORMATION CONTAINED IN THE BALANCE-SHEET OF A COMPANY REFERRED TO IN PART X.

Liabilities.

1. *Summary of Authorised Share Capital and Issued Share Capital.*
2. Redeemable Preference Shares, stating date on or before which the shares are or are liable to be redeemed.
3 Debentures stating the nature of the Security.
4. Redeemed debentures which the Company has power to re-issue.
5. Loan (*a*) secured, stating the nature of the Security ;
(*b*) unsecured.
6. Loans from Banks :—
(*a*) Secured, stating nature of security.
(*b*) Unsecured
7. Profit and Loss Account, showing (*unless disclosed in a separate account*) :—
Balance as per previous Balance-Sheet
Appropriation thereof.
Profit since last Balance-Sheet.
8. Contingent Liabilities
9. Arrears of Cumulative Preference Dividend.

Assets.

1. Fixed Assets, with sufficient partituiars to disclose their general stating how their values are arrived at.
2. Preliminary expenses so far as not written off
3 Any expenses iucurred in connection with any issue of Share Capital or Debentures, so far as not written off
4 If it is shown as a separate item in or is otherwise ascertainable from the books of the Company, or from any contract for the sale or purchase of any property to be acquired by the Company, or from any documents in the possession of the Company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property the amount of the goodwill and of any patents and trade marks as so shown or ascertained
5 Interest paid on Capital, so far as not written off, showing the Share Capital on which and the rate at which interest has been paid out of Capital during the period to which the accounts rela e
6. Discount allowed on Shares issued, so far as not written off
7. Commission paid or allowed in respect of any shares or debentures, so far as not written off.
8. Loans outstanding to enable employees or trustees on their behalf to purchase shares in the Company
9. Particulars showing :—

(*a*) the amount of any loans which during the period to which the accounts relate have been made either by the Company or by any other person under a guarantee form or on a security provided by the company to any director or officer of the Company, including any such loans which were repaid during the said period ,

and

(*b*) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof;

and

(*c*) the total of the amount paid to the directors as remuneration for their services inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the Company or by or from any subsidiary Company.

Note (1).—There shall not be required to be shown :—

(*a*) in the case of a Company the ordinary business of which includes the lending of money, loans made by the Company in the ordinary course of its business ;

or

(*b*) loans made by the Company to any employee of the Company if the loan does not exceed twenty thousand rupees and is certified by the directors of the Company to have been made in accordance with any practice adopted or about to be adopted by the Company with respect to loans to its employees.

Note (2).—The foregoing shall not apply in relation to a Managing Director of the Company, and in the case of any other director who holds any salaried employment or office in the Company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

(Where a company is a holding company then the Balance-Sheet shall disclose the particulars required by section 132A.)"

The Annotated
Civil Court Hand-Book

VOL. I.

THE ACTING JUDGES ACT, 1867.

ACT NO XVI OF 1867.

RECEIVED THE G-G.'S ASSENT ON THE 1ST MARCH, 1867.

An Act to authorize the making of acting appointments to certain Judicial Offices.

Preamble.

WHEREAS the Governor-General of India in Council or the Local Government, as the case may be, is empowered by divers enactments to appoint the Judges of certain Courts in British India: and whereas it has been doubted whether he or it is empowered to appoint persons to act temporarily as such Judges, and it is expedient to remove such doubts, it is hereby enacted as follows :—

Power to appoint acting Judges.

1. In every case in which the Governor-General of India in Council, or the Local Government, as the case may be, has power under any act or Regulation to appoint a Judge of any Court in British India, such power shall be taken to include the power to appoint any person capable of being appointed a permanent Judge of such Court to act as Judge of the same Court for such time as the Governor-General of India in Council or the Local Government, as the case may be, shall direct. Every person so appointed to act temporarily as a Judge of any such Court shall have the powers and perform the duties which he would have had and been liable to perform in case he had been duly appointed a permanent Judge of the same Court.

Certain enactments to be construed as is they contained a clause like section 1 of Act.

2. Every such Act and Regulation shall be construed as if it contained a special clause to the purport or effect of the first section of this Act.

THE ADMINISTRATOR-GENERAL'S ACT, 1913.

ACT NO. III OF 1913.

RECEIVED THE G.-G.'S ASSENT ON THE 27TH FEBRUARY, 1913.

An Act to consolidate and amend the law relating to the office and duties of Administrator-General.

WHEREAS it is expedient to consolidate and amend the law relating to the office and duties of Administrator-General; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent and commencement

1. (1) This Act may be called the Administrator-General's Act, 1913

(2) [illegible] ng the Sonthal Parganas [illegible] h and Indian subjects of [illegible]

(3) It shall come into force on such date as the Governor-General in Council may, by notification in the *Gazette of India*, direct.

Notes—"The office of the Administrator-General in this country grew out of the Mercantile and Trading Company in Bengal, whose interests were safeguarded by the charter establishing the Supreme Court of Judicature at Fort William in Bengal dated the 26th March, 1774. Its functions have been developed, and regulated on lines which experience has shown to be necessary, and it is an illustration of the adoption, and modification, to suit local circumstances of those principles which underlie the law of trusts, and the law affecting the administration of the estates, of the deceased persons"—*Vide Kenny's Administration Practice*. By Stat. 39 and 40 Geo. II. c 79, ecclesiastical Registrars were appointed to take charge of deceased's property where the deceased had no next-of-kin. The first Administrator-General was appointed by Act VII of 1849.

Local Extent—Act II of 1874 was in force in Sonthal Parganas, in the Arakan Hill District, in British Baluchistan, in Augul and in the Khondmals.

Interpretation clause

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "assets" means all the property, movable and immovable, of a deceased person, which is chargeable with, and applicable to, the payment of his debts and legacies, or available for distribution among his heirs and next-of kin:

(2) "exempted person" means an Indian Christian, a Hindu, Muhammadan, Parsi or Buddhist, or a person exempted under section 332 of the Indian Succession Act, 1865,* from the operation of that Act:

(3) "Government" means the Governor-General in Council, so far as the Act relates to the Presidency of Bengal and the Local Governments of Madras and Bombay respectively, so far as the Act relates to those Presidencies:

(4) "Indian Christian" means a Native of India who is or in good faith claims to be of unmixed Asiatic descent, and who professes any form of the Christian religion:

(5) "Letters of administration" includes any letters of administration, whether general or with a copy of the will annexed, or limited in time or otherwise:

(6) "next-of-kin" includes a widower or widow of a deceased person, or any other person who by law would be entitled to letters of administration in preference to a creditor or legatee of the deceased:

(7) "Official Gazette" means, in the case of the Presidency of Bengal, the *Gazette of India*, and in the cases of the Presidencies of Madras and Bombay, the *Fort St. George* and *Bombay Government Gazettes*, respectively:

(8) "Prescribed" means prescribed by rules under this Act:

(9) (*a*) "Presidency of Bengal" includes the territories for the time being under the Government of the Governor of Fort William in Bengal in Council, the United Provinces of Agra and Oudh, the provinces of the Punjab, Burma, Bihar and Orissa, the Central Provinces, Assam, the North-West Frontier Province, the province of Delhi, Ajmer and Merwara, the Andaman and Nicobar Islands, and such of the territories of Native States aforesaid as the Governor-General in Council may by notification in the *Gazette of India*, direct:

(*b*) "Presidency of Bombay" includes the territories for the time being under the government of the Governor of Bombay in Council, the Province of British Baluchistan, and such of the territories of Native States aforesaid as the Governor General in Council may, by notification in the *Gazette of India*, direct:

(*c*) "Presidency of Madras" includes the territories for the time being under the government of the Governor of Fort St. George in Council,

* Act 10 of 1865. See now Act 39 of 1925 by which Act 10 of 1865 has been repealed and re-enacted.

the province of Coorg, and such of the territories of Native States aforesaid as the Governor-General in Council may, by notification in the *Gazette of India*, direct:

(10) "Presidency" means any of the Presidencies mentioned in clause (9):

(11) "Revenues of the Government" means, in respect of any part of India in which the powers and duties of the government under this Act are exercised and discharged by a Local Government, the revenues allocated to that government under the Government of India Act."*

Assets—The term "assets" means and includes property of a deceased person chargeable with and applicable to the payment of his debts and legacies. It would, therefore, include immovable property. *In re Courjan*, 25 C. 65; see also *Mancharji* v. *Narayan*, 1 B. H. C. R 83.

Exempted persons—Section 332 of Act X of 1865 has been repealed. See now section 3 of Act 39 of 1925 The following persons were exempted by section 332 of the Indian Succession Act X of 1865.—(1) All Native Christians in the Province of Coorg, *vide* notification No 204, dated the 23rd July, 1868, in the *Gazette of India*, 1868, p 1092;(2) the Jews of Aden, *vide* notification No. 1651, dated the 20th November, 1886, Bombay List of Local Rules and Orders, Ed. 1896, p 26; (3) the members of the races known as *Khasias* and *Syatings*, see notification No. 1671, dated the 20th October, 1887, Assam List of local Rules and Orders, Ed 1893, p. 6; (4) *Mundas, Oraons, Hos, Bhumis, Khasias, Ghasis, Gonds, Khonds, Kokawas, Kurmis, Malganis, and Pans* dwelling in the province of Bihar and Orissa. *Vide* notification No. 550, Home Department (Judicial) Simla, dated the 2nd May 1913; see also *Tuni Orain* v. *Leela Oraon*, 20 C W. N 1082 (1083)=1 Pat L J. 225=36 Ind. Cas. 206.

Indian Christian.—This definition is taken from the Indian Christian Adminis-

tion with

similar usa

selves with

inheritance

Mukherjee

9 M. I A. 1

v. *Gonslaves*, 23 B. 539; *Dagree* v. *Pacotti*, 19 B 783. But he will be considered as an exempted person under this Act.

But if a Hindu has an admiration for the principles of Christianity and attends church service, he does not thereby cease to be a Hindu nor does his personal law cease to bind him before baptism. *Jogendra* v *Rani*, (1900) P. L. R 251, *Mrs. Edith Susan Mukherjee* v. *Mrs George Alfred and ors*, 52 P. W. R 1907; *Administrator-General* v. *Anandachari*, 8 M 466; *Ponnusami* v *Dorasami*, 2 M. 209.

Letters of Administration—The term includes letters of administration, whether with the will annexed or without it. It also includes letters of administration limited in time or otherwise. Limited grants are dealt with in Chapter II of Part IX of the Succession Act, 39 of 1925.

Brown v. *Wood* Allyn, 36 In England relations by marriage are not included. *Nichols* v *Savage*, 18 Ves, 53; *Garrick* v. *Camden*, 14 Ves 372; *Watt* v *Watt*. 3 Ves. 244; *Bailey* v *Kin Wright*. 18 Ves. 49, But in India the law is otherwise. It includes both husband and wife. In sections 55 and 56 of the Indian Succession Act, the words "next-of-kin" and "relatives" are synonymous, and are collective names for the persons mentioned in Part I and Part II of Schedule II. *Hirjibai* v. *Burjorji*, 22 B. 909

* Added by Act 21 of 1922.

(*b*) a legatee other than an universal legatee; or
(*c*) a friend of the deceased.

Scope—By section 7 the Court is required to grant letters of administration to the Administrator-General, if no person appear entitled as next-of-kin and where such grant is made by the High Court at any Presidency-town. So far as other places are concerned the Administrator-General of the Presidency has a preferential ... letters of administration over a creditor or a legatee other than ... ween this section ... made to the Ad- ... his section it is ... not. These two ... Indian Succession Act, 39 of 1925.

9. If any person, not being an exempted person, has died leaving within any Presidency assets exceeding the value of "two thousand"* rupees,

When Administrator General is to administer estates of persons other than exempted persons.

and if no person to whom any Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such presidency for probate of his will, or for letters of administration of his estate,

the Administrator-General of the Presidency in which such assets are shall, subject to any rules made by the Government, within a reasonable time after he has had notice of the death of such person, and of his having left such assets, take such proceedings as may be necessary to obtain from the High Court at the Presidency town letters of administration of the estate of such person

Scope—If the assets do not exceed two thousand rupees, the Administrator-Gene ... v. *Me* ... Rs. ... ficate ... 1874, ... out ... in the case of exempted persons, in as much as letters of administration as regards their estates are not necessary to establish representative title. The legal heirs are their representatives even without letters of administration.

10. Whenever any person has died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court at a Presidency-town, the Court, on being satisfied that danger is to be apprehended of misappropriation, deterioration or waste of such assets unless letters of administration of the estate of such person are granted, may, upon the application of the Administrator-General or of any person interested in such ass... upon such terms as ... and other expenses as ... apply for letters of administration of the estate of such person: Provided that, in the case of an application being made under this section for letters of administration of the estate of an exempted person, the Court may refuse to grant letters of administration, if it is satisfied that such grant is unnecessary for the protection of the assets; and in such case the Court shall make such order as to the costs of the application as it thinks fit.

Power to direct Administrator-General to apply for administration

... and Mahomedans ... to be apprehen- ... ministration of the ... Act of Limitation

*Substituted by Act 32 of 1926.

may ultimately become a bar to the recovery of assets is not such danger of misappropriation as warrants the grant of administration to the Administrator-General. *In re Girdar Das*, 1 M. H. C. R. 234. A debtor to the estate, it seems, cannot apply for an order under this section, *Ibid.* As to whether the title of the Administrator-General under this section relates back to the death of the deceased *vide Lal Chand* v. *Gumtibai*, 8 B. H C R. O C 10. See also section 220 of the Indian Succession Act, 1925. Under this section the Administrator-General cannot take possession of the estate without a previous order of the Court. *Nrityo Gopal* v. *Administrator-General*, 10 C. W. N. 241.

Power to direct Administrator-General to collect and hold assets until right of succession or administration is determined.

11. (1) Whenever any person has died leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said High Courts,

and such Court is satisfied that there is no person immediately available, who is legally entitled to the succession to such assets, or that danger is to be apprehended of misappropriation, deterioration or waste of such assets, before it can be determined who may be legally entitled to the succession thereto, or whether the Administrator-General is entitled to letters of administration of the estate of such deceased person,

the Court may, upon the application of the Administrator General or of any person interested in such assets, or in the due administration thereof, forthwith direct the Administrator-General to collect and take possession of such assets, and to hold, deposit, realize, sell or invest the same according to the directions of the Court, and in default of any such directions according to the provisions of this Act so far as the same are applicable to such assets.

(2) Any order of the Court made under the provisions of this section shall entitle the Administrator General,

(*a*) to maintain any suit or proceeding for the recovery of such assets, and

(*b*) if he thinks fit, to apply for letters of administration of the estate of such deceased person, and

(*c*) to retain out of the assets of the estate any fees chargeable under rules made under this Act, and to reimburse himself for all payments made by him in respect of such assets which a private administrator might lawfully have made.

Scope.—The admission by the applicant that there is a valid will does not prevent him from taking recourse to this section The word "succession" in this section should not be read as intestate succession. Even where the Administrator-General is made executor of a will, he can apply under this section *In the goods of Pashupati Mukherjee*, 24 C. W. N. 326=56 Ind. Cas. 431 ; see also 5 C. 220 An order under this section whilst in force, is like probate or letters of administration so far as respects the title under it to get in the property of the deceased. *Hogg v Henry*, 2 Boul 654 cited in *Henderson*, p 422. The position of an Administrator-General is like that of an ordinary administrator. Pending grant of letters of administ-ation, he can only make payments for the benefit of or for preservation of the [illegible] the estate. *In the goods* [illegible] as, 8 Ex. Rep. 302 : see also [illegible] not part with his interest [illegible] iness premises. 25 Ind. Cas. [illegible] for the protection of the [illegible] Under this section the right of the Administrator-General dates from the death of the deceased. *Bhaiji* v. *A. G.*, 23 B. 428. Under this section he can only protect the estate and is not to administer property. *Henderson*, p. 423 ; see also 26 Ind. Cas. 793

Grant of probate or letters of administration to person appearing in the course of proceedings taken by Administrator-General under sections 9, 10 and 11.

12. If, in the course of proceedings to obtain letters of administration under the provisions of section 9, section 10 or section 11 any person appears and establishes his claim—

(*a*) to probate of the will of the deceased ;

(*b*) to letters of administration as next-of-kin of the deceased, and gives such security as may be required of him by law,

the Court shall grant probate of the will or letters of administration accordingly, and shall award to the Administrator-General the costs of any proceedings taken by him, under those sections to be paid out of the estate as part of the testamentary or intestate expenses thereof.

Notes—"Sections 12 and 13 are explained by Mr Sen as applying only to cases where a person comes forward and unexpectedly propounds a will. I think there is no reason in sections 12 and 13 which requires a condition of unexpectedness at all". *Per Rankin J* in *In the Goods of Pashupati Mukherjee*, 24 C. W. N 326 at p. 328 see also 26 Ind Cas 793

Grant of administration to Administrator-General in certain cases

13. If, in the course of proceedings to obtain letters of administration under the provisions of section 9, section 10 or section 11, no person appears and establishes his claim to probate of a will, or to a grant of letters of administration as next-of kin of the deceased, within such period as to the Court seems reasonable,

or if a person who has established his claim to a grant of letters of administration as next of-kin of the deceased fails to give such security as may be required of him by law,

the Court may grant letters of administration to the Administrator-General.

Notes—*Vide* notes under s. 12

Administrator-General not precluded from applying for letters within one month after death.

14. Nothing in this Act shall be deemed to preclude the Administrator-General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased.

Notes—Under section 9, the Administrator-General is bound to apply for probate or letters of administration after a period of one month if the deceased be [illegible] in any Presidency-town assets [illegible] hat section does not preclude [illegible] for a grant within the period of one month

(*b*) *Estates of Persons subject to the Army Act "or the Air Force Act".**

Act not to affect Regimental Debts Act, 1893

15. Nothing in this Act shall be deemed to affect the provisions of the Regimental Debts Act, 1893. †

Notes—On the death of a person while subject to military law the prescribed committee of adjustment shall, as soon as may be, in accordance with the prescribed regulations secure and make an inventory of all such of the effects of the deceased as are in camp or quarters and ascertain the amount and provide for the payment of the preferential charges on the property of the deceased. *Vide* s. 1 of Regimental Debts Act, 1893.

Letters of administration not necessary in respect of small estates administered by Administrator-General in accordance with the Regimental Debts Act, 1893.

16. It shall not be necessary for the Administrator-General to take out letters of administration of the estate of any deceased person which is being administered by him in accordance with the provisions of the Regimental Debts Act, 1893,† if the value of such estate does not on the date when such administration is committed to him exceed rupees one thousand, but he shall have the same power in regard to such estate as he would have had if letters of administration had been granted to him.

* Inserted by Act 10 of 1927. † 55 & 56 Vict. c. 57.

Regimental Debts Act.—The Administrator-General can apply under the Regimental Debts Act, *Vide* s 7 (2), s 8 (2), and s. 9.

Power to grant Administrator-General letters limited to purpose of dealing with assets in accordance with the Regimental Debts Act, 1893

17. If the Administrator-General applies, in accordance with the provisions of the Regimental Debts Act, 1893,* for letters of administration of the estate of any person subject to the Army Act, "or the Air Force Act,"† the Court may grant to him letters of administration limited to the purpose of dealing with such estate in accordance with the provisions of the Regimental Debts Act, 1893*.

Notes.—*Vide* ss. 11 to 24 of the Regimental Debts Act, 1893.

(*c*) *Revocation of Grants.*

Recall of Administrator-General's administration, and grant of probate, etc., to executor or next-of-kin

18. If an executor or next-of-kin of the deceased who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto establishes to the satisfaction of the Court a claim to probate of a will or to letters of administration in preference to the Administrator-General, any letters of administration granted in accordance with the provisions of this Act to the Administrator General may be revoked, and probate or letters of administration may be granted to such executor or next-of-kin as the case may be:

Provided that no letters of administration granted to the Administrator-General shall be revoked for the cause aforesaid, except in cases in which a will of the deceased is proved in the Presidency, unless the application for that purpose is made within six months after the grant to the Administrator-General and the Court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

Revocation.—A grant may be revoked where it has been granted without citing necessary parties. *Trist and Coote*, p. 180 (*n*); *Mortimer* on Pro. Prac. 431. A person having notice can not apply for revocation. *Ratcliffe* v. *Barnes*, 2 S. and T. 486; *Wytcherley* v *Andrews*, 2 P and D. 328; *Newells* v. *Weeks*, 2 Phill 224. It is necessary for the party who appears for revocation to prove not only that no special citation was served on him but also that he had no knowledge of the proceedings. *Premchand* v. *Surendra*, 9 C. W N. 190 A grant is ordinarily revoked on the ground that no citation is served. 2 C. W. N. 100; 2 C. W. N. 607.

Cost of obtaining administration etc., may, on revocation, be ordered to be paid to Administrator-General out of assets.

19. If any letters of administration granted to the Administrator-General *in accordance with the provisions of this Act* are revoked, the Court may order the costs of obtaining such letters of administration, and the whole or any part of any fees which would otherwise have been payable under this Act, together with the costs of the Administrator-General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator General out of the estate:

Provided that nothing in this section shall affect the provisions of clause (*c*) of sub-section 2 of section 11.

Notes.—On revocation the Court may order costs to be paid to the Administrator-General out of assets. The Administrator-General is also allowed commission even if he has taken manual possession of cash, Government promissory notes, etc. *In the goods of Simpson*, 1 M. H. C. R. 171; see also *Nirtya Gopal Biswas* v. *A. G.*, 10 C. W. N. 241.

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* 55 & 56 Vict. C. 57

† Inserted by Act 10 of 1927

After revocation, letters granted to Administrator-General to be deemed as to him to have been voidable only.

20. If any letters of administration granted to the Administrator-General in accordance with the provisions of this Act are revoked, the same shall, so far as regards the Administrator-General and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable, except as to any act done by any such Administrator-General or other person, as aforesaid, after notice of a will or of any other fact which would render such letters void :

Provided that no notice of a will or of any other fact which would render any such letters void shall affect the Administrator-General or any person acting under his authority in pursuance of such letters unless, within the period of one month from the time of giving such notice, proceedings are commenced to prove the will, or to cause the letters to be revoked, and such proceedings are prosecuted without unreasonable delay.

Voidable—The effect of the revocation of the probate is to revise the original proceeding for the [illegible] The effect of the revocatic [illegible] *laja* v. *Jadu*, 19 C W. N. 24 [illegible] under it are also void *Ab* [illegible] 1905) 1 Ch 613; *Wooly* v. [illegible] N 673. Under the section su [illegible] l in the section when such a [illegible]

Payments made by Administrator General prior to revocation.

21. If any letters of administration granted to the Administrator-General in accordance with the provisions of this Act are revoked, upon the grant of probate of a will, or upon the gra[illegible] a copy of the [illegible] acts done by or under the authority of the [illegible] of such letters of administration, prior to th[illegible] valid under any letters of administration lawfully granted to him with a copy of such will annexed, shall be deemed valid notwithstanding such revocation.

Payments made by Administrator-General—"All acts done by an executor [illegible] egal course of administration are valid and [illegible] ed by [illegible] *Bigelo* [illegible] *Basset* [illegible] *J.* in [illegible] 19 C. W. N. 240

(*d*) *General.*

Administrator-General's petition for grant of letters of administration.

22. Whenever any Administrator General applies for letters of administration in accordance with the provisions of this Act, it shall be sufficient if the petition required to be presented for the grant of such letters states,

(*i*) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner,

(*ii*) the names and addresses of the surviving next of-kin of the deceased if known,

(*iii*) the particulars and value of the assets likely to come into the hands of the petitioner,

(*iv*) particulars of the liabilities of the estate if known.

Cf. S. 278 of the Succession Act, 1925.

Notes.—The term "assets" means and includes property of a deceased person chargeable with and applicable to the payment of his debts and legacies. It would, therefore, include immovable property. *In re Courjan*, 25 C. 65; see also *Mancharjee* v. *Narayan*, 1 B H. C. R. 83.

Names of Surviving Next-of-Kin.—The applicant is bound to state the names of the family or other relatives of the intestate. *Ralph* v. *Hale*, 7 P. R. 1902.

Probates or letters to be granted to Administrator-General by his name of office, and powers of that officer in cases in which probate or letters of administration have been granted to the Ecclesiastical Registrar.

23. (1) All probates or letters of administration granted to any Administrator-General shall be granted to him by that name, and all probates or letters of administration heretofore granted to the Ecclesiastical Registrar, or to the Administrator-General of any Presidency shall authorise the Administrator-General of the same Presidency to act as executor or administrator, as the case may be, of the estate to which such probate or letters relate.

(2) All probates and letters of administration granted to the Ecclesiastical Registrar of any of the late Supreme Courts shall have the same effect in all respects as to any act hereafter done or required to be done under this Act as if they had been granted to the Administrator-General.

To act as executor.—If an Administrator-General takes out letters of administration to the estate, movable and immovable, of a Hindu dying intestate, the whole estate of the deceased vests in the Administrator-General and he can dispose of it without the sanction of the Court in such manner as may appear to him proper. *P. Alwar Chetty* v. *P. Chidambara*, 26 Ind. Cas. 792=27 M. L. J. 400; see also 33 C. 713. But no such estate vests in him if the deceased was an insolvent. *Navajee* v. *A. G.*, 22 Ind. Cas. 566=38 M. 500. After his death all assets vest in his successor in office. *A. G.* v. *Debendra*, 33 C. 713.

Presidency.—*Vide* 4 C. L. R. 42=4 C. 770; 1 C. 52=24 W. R. 206.

Effect of probate or letters granted to Administrator-General.

24. Probate or letters of administration granted by the High Court at any Presidency town to the Administrator-General of any Presidency shall have effect over all the assets of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such assets to such Administrator-General:

Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout one or more of the other Presidencies.

Whenever a grant is made by a High Court to the Administrator-General with such effect as last aforesaid, the Court shall send to the other High Courts a certificate that such grant has been made, and such certificate shall be filed by the Courts receiving the same.

[illegible] istration to an Administra- [illegible] iose grants are not affected [illegible] *of Hewson*, 4 C. 770=4 C. C. 52=24 W. R., 206.

Representative title.—An Administrator-General may sue and be sued in his name. *Vide Antonie* v. *A. G.*, 28 B. 529; *Bolaram* v. *A. G*, 8 C. W. N. 93; *Corporation of Calcutta* v. *A. G.*, 30 C. 927.

Transfer by private executor or administrator of interest under probate or letters.

25. (1) Any private executor or administrator may with the previous consent of the Administrator-General of the Presidency in which any of the assets of the estate, in respect of which such executor or administrator has obtained probate or letters of administration, are situate, by an instrument in writing under his hand notified in the official Gazette, transfer the assets of the estate vested in him by virtue of such probate or letters to the Administrator-General by that name or any other sufficient description.

(2) As from the date of such transfer the transferor shall be exempt from all liability as such executor or administrator, as the case may be, except in

respect of acts done before the date of such transfer, and the Administrator-General shall have the rights which he would have had, and be subject to the liablities to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by that name at the date of such transfer.

operty of a deceased testator, and administration which is not confined to any particular class of executors or of estates. It is given in broad and comprehensive terms, to any and every testamentary, executor in whom the estates of the deceased testator have been legally vested by virtue of the probate,—provided only, that no transfer shall be made to the Administrator-General without his consent. Section 31 of Act II of 1874, is a re-enactment of s. 30 of Act XXIV of 1867. At the time when the prior Act was passed the executor of a Hindu testator was not a person entitled to transfer under the Act. But by the time when the latter Act was passed, he became a person entitled so to act, by virtue of the provisions of the Hindu Wills Act, 1870. So a Hindu testator now may effect a valid transfer of the estate under this section. *A G* v *Premlal*, 22 C. 788 P. C.; see also 22 B. 1.

Distribution of assets.

26. (1) When the Administrator-General has given the prescribed notice for creditors and others to send in to him their

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as he has notice of.

(2) He shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution.

(3) No notice of any claim which has been sent in and has been rejected or disallowed in part by the Administrator-General shall affect him unless proceedings to enforce such claim are commenced within one month after notice of the rejection or disallowance of such claim has been given in the prescribed manner and unless such proceedings are prosecuted without unreasonable delay.

(4) Nothing in this section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

(5) In computing the period of limitation for any suit, appeal or application under the provisions of any law for the time being in force, the period between the date of submission of the claim of a creditor to the Administrator-General and the date of the final decision of the Administrator-General on such claim

of the Succession Act, 1925. notices to creditors and other to send in their claims, may at the expiration of the time named in the notices, proceed to distribute the estate without being liable for any claim of which they shall not have had notice at the time of the distribution. *Clegg* v. *Rowland*, 3 L. R. Eq. 368. But an executor who has notice of a claim against the estate of the testator is not discharged by such a notice. *Re Land Credit Company* etc., 21 W. R. 135 (Eng.)

Appointment of Official Trustee as trustee of assets after completion of administration.

27. (1) When the Administrator-General has, so far as may be, discharged all the liabilities of an estate administered by him, he shall notify the fact in the official Gazette, and he may, by an instrument in writing, with the consent of the Official Trustee and subject to any rules made by the Government, appoint the Official Trustee to be the trustee of any assets then remaining in his hands.

(2) Upon such appointment such assets shall vest in the Official Trustee

e provisions of the

on the same trusts

Principle.—This section is based on the broad principle that when an executor, who happens also to be named a trustee of a legacy to be laid out in stock, has fully administered the estate, and assented to the legacy and retains the legacy in his hands, not as assets of the testator, but as trustee of the legacy, then the principles which would apply to another trustee must apply to him. Williams on *Executors*, 11th Ed, p. 1129 citing *Byrchall* v. *Bradford*, 6 Madd. 13; see also *In re Simes*, (1902) 1 Ch 176 at P. 182.

Power for High Court to give directions regarding administration of estate.

28. (1) The High Court at the Presidency-town may, on application made to it, give to the Administrator-General of the Presidency any general or special directions as to any estate in his charge or in regard to the administration of any such estate.

(2) Applications under sub-section (1) may be made by the Administrator-General or any person interested in the assets or in the due administration thereof.

No security nor oath to be required from Administrator-General.

29. (1) No Administrator-General shall be required by any Court to enter into any administration bond or to give other security to the Court, on the grant of any letters of administration to him by that name.

Manner in which petitions to be verified by Administrator-General and his Deputy

(2) No Administrator-General or Deputy Administrator-General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and, if the facts stated in any such petition are not within the Administrator-General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

Entry of Administrator-General not to constitute notice of a trust.

(3) The entry of the Administrator-General by that name in the books of a Company shall not constitute notice of a trust, and a Company shall not be entitled to object to enter the name of the Administrator-General on its register by reason only that the Administrator General is a corporation and in dealing with assets the fact that the person dealt with is the Administrator General shall not of itself constitute notice of a trust.

Verification.—The Administrator-General as a public officer, is exempted from verifying otherwise than by his signature any petition presented by him under the provision of the Act. *In the goods of P. J Avdall*, 16 C 404=3 C. W. N. 298; *In the goods of Mc Comiskey*, 20 C 897.

Power to examine on oath.

30. The Administrator-General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath (which he is hereby authorised to administer) any person who is willing to be so examined by him regarding such question.

Notes—This section gives the Administrator-General power to administer oath and examine persons he desires to examine

(e) *Grant of Certificates.*

In what case Administrator-General may grant certificate.

31. Whenever any person has died leaving assets within any Presidency, and the Administrator-General of such presidency is satisfied that such assets excluding any sum of money deposited in a Government Savings Bank, or in any Provident Fund to which the provisions of the Provident Funds Act, 1897,* apply, did not at the date of death exceed in the whole "two thousand"† rupees—in value, he may, after the lapse of one month from the death if he thinks fit, or before the lapse of the said month if he is requeste

* 9 of 1897; see now Act 19 of 1925. † Substituted by Act 32 of 19

so to do by writing under the hand of the executor or the widow or other *person entitled to administer the* estate of the deceased, grant to any person, claiming otherwise than as a creditor to be interested in such assets, or in the due administration thereof, a certificate under his hand entitling the claimant to receive the assests therein mentioned left by the deceased, within the presidency to a value not exceeding in the whole "two thousand"* rupees :

Provided that no certificate shall be granted under this section—

(*i*) *where probate of the deceased's will or letters of administration of* his estate has or have been granted, or

(*ii*) in respect of any sum of money deposited in a Government Savings Bank or in any Provident Fund to which the provisions of the Provident Funds Act, 1897,† apply.

Notes—A will made in Bombay is subject to the provisions of the Hindu Wills Act. *But where the property comprised in the will is less than* Rs. *1000 (now* Rs. 2000) in value a claimant under the will is entitled to obtain a certificate of administration under this section and then to sue for possession of the property mentioned therein, without taking out probate. *Narayan* v. *Pandurang*, 6 Ind. Cas. 905=12 Bom. L. R 471=34 B. 503 Time should not run against claimants, who, in faith of the representation made to them by the Administrator-General, do not take legal remedies against the estate for the recovery of their dues. *Thomas Peckie, In re*, 22 Ind. Cas. 262.

Grant of certificate to creditors and power to take charge of certain estates.

32. If, in cases falling within section 31, no person claiming to be interested otherwise than as a creditor in such assets or in the due administration thereof obtains, within three months of the death of the deceased a certificate from the Administrator-General under the same section or probate *of a will or letters of administration of the* estate of the deceased, and such deceased was not an exempted person or was an exempted person who has left assets within the ordinary original civil jurisdiction of the High Court, or within any area notified by the Government in this behalf in the official Gazette, the Administrator-General may administer the estate without letters of administration, in the same manner as if such letters had been granted to him ;

and if he neglects or refuses to administer such estate, he shall, upon the [illegible]

Act [illegible] before granting such certificate, [illegible] reasonable security for the due administration of the estate of the deceased.

Scope—Under section 31 a cre[illegible] tion. This section empowers the [illegible] to a creditor. He may, if he thin[illegible] section safeguards the interest of [illegible] administration or a certificate under section 31.

Administrator-General not bound to grant certificate unless satisfied of claimant's title, etc.

33. The Administrator-General shall not be bound to grant any certificate under section 31 or section 32, unless he is satisfied of the title of the claimant and of the value of the assets left by the deceased within the Presidency either by the oath of the claimant, or by such other evidence as he requires.

Scope—Prior to the grant of a certificate, the Administrator-General has the right to be satisfied, by evidence or affidavit, of the value of the property and the title of the claimant.

* Substituted by Act 32 of 1926. † 9 of 1897 ; see now Act 19 of 1925.

34. The holder of a certificate granted in accordance with the provisions of section 31 or section 32 shall have in respect of the assets specified in such certificate the same powers and duties, and be subject to the same liabilities as he would have had or been subject to if letters of administration had been granted to him :

Effect of certificate.

Provided that nothing in this section shall be deemed to require any person holding such certificate,

(*a*) to file accounts or inventories of the assets of the deceased before any Court or other authority, or

(*b*) save as provided in section 32 to give any bond for the due administration of the estate.

Scope.—The certificate-holder under sections 31 and 32 is in the same position as a grantee of letters of administration and is subject to the same liabilities. But he is not bound to file accounts and inventories of the assets of the deceased, nor is he bound to give a security bond if a certificate is granted under section 31.

35. The Administrator-General may revoke a certificate granted under the provisions of section 31 or section 32 on any of the following grounds, namely :—

Revocation of certificate

(*i*) that the certificate was obtained by fraud or misrepresentation made to him,

(*ii*) that the certificate was obtained by means of an untrue allegation of a fact essential in law to justify the grant though such allegation was made in ignorance or inadvertently.

Notes.—This section is framed on the line of s. 263 of the Succession Act. A grant which is obtained fraudulently is void *ab initio*. *Debendra* v. *A. G.*, 33 C. 713 (F. B) ; *Ellis* v. *Ellis* (1905) 1 Ch. 613. *Abram* v *Cunnigham*, Lev. Rep. 182. The Court has power to annul a certificate where it is obtained fraudulently or on gross and fraudulent misrepresentation of fact *Vide Debendra* v. *A. G.*, 33 C. 713 ; *Bonall* v. *Bonall*, 27 Ch. 220 ; *Pandit* v. *Gakuaran*, 6 C. W. N. 767.

Clause (2).—According to this clause a grant is revoked where it has been obtained on a false suggestion made by the party in ignorance only or *per incurium*. *Tr. Coote's Pro. Prac.*, p 189

36. (1) When a certificate is revoked in accordance with the provisions of s. 35, the holder thereof shall, on the requisition of the Administrator General, deliver it up to such Administrator-General, but shall not be entitled to the refund of any fee paid thereon.

Surrender of revoked certificate.

(2) If such person wilfully and without reasonable cause omits to deliver up the certificate, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Scope.—By this section provision is made for the surrender of a revoked certificate. When the cert [illegible] General, the certifica [illegible] both. This section c [illegible] just reluctance to leave grant in the hand of its grantee, the Court requires it to be produced and delivered to the Registrar at the time of its revocation So that it may be afterwards cancelled in the registry If the proceeding be compulsory, *i. e*, by citation of the party, he will bring it into the registry, or suffer the penalty of his contempt. If it be impracticable to compel the production, the Court will revoke it, though it cannot cancel it." *Tr. & Cootes' Pro Prac.* 194 ; *Baker* v. *Russell*, 167 ; *Scotter* v. *Field*, 6 N. C. 182 ; *Richard* v. *Langley*, 2 Rob. 408 ; *In the* [illegible] *Carr*, 1 S. & T. 11,

Provided that, in the case of any estate, the administration of which has been committed to the Administrator General before the commencement of this Act, the fees prescribed under this section shall not exceed the fees leviable in respect of such estate under the Administrator-General's Act, 1874,* as subsequently amended :

Provided further that, in respect of the duties of the Administrator-General under the Regimental Debts Act, 1893,† the fees prescribed in this section shall be determined in accordance with the provisions of that Act.

(2) The fees under this section may be at different rates for different estates or classes of estates or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as Government may determine to be required to insure the revenues of the Government‡ against loss under this Act).

Right to Commission.—The Administrator-General is entitled to charge only one commission upon his collection. He is entitled to charge commission upon the entire collections of a revenue-paying estate. He is entitled to commission on realisations made and handed over to him by the Receiver ; he is not entitled to claim commission on the value of the corpus of such part of his estate as is in the hands of the Receiver. *Watkins* v *Sarat Chandra*, 31 C. 572. The value of the assets is to be considered at the date of the distribution 43 M. L. J. 347=74 Ind. Cas. 182 ; see also, 4 C 770 ; 25 C 65 ; 1 M 148 The term 'assets" means and includes property of a deceased person chargeable with and applicable to the payment of debts and legacies *In the goods of Courjan*, 25 C 65

Disposal of fees.

43. (1) Any expenses which might be retained or paid out of any estate in the charge of the Administrator-General, if he were a private Administrator of such estate, shall be so retained or paid and the fees [illegible] 42 shall be retained or paid in like [illegible]

(2) The A[illegible] to such authority, in such manner and at such time as the Government may prescribe, all fees received by him under this Act, and the same shall be carried to the account and credit of the Government §

Notes—The Administrator-General has the same right of retainer in satisfaction of his own debt as that which an ordinary executor or administrator has. *Richie* v *Stokes*, 2 Macc. 255 *cited in Henderson*, p. 437

PART V.

AUDIT OF THE ADMINISTRATOR-GENERAL'S ACCOUNTS.

Audit of Administrator-General's accounts.

44. The accounts of every Administrator-General shall be audited at least once annually, and at any other time if the Government so direct, by the prescribed persons and in the prescribed manner.

Auditors—The accounts should be audited annually by the persons prescribed by the Government and in the prescribed manner.

Auditors to examine accounts and report to Government.

45. The auditors shall examine the accounts and forward to the Government a statement thereof in the prescribed form, together with a report thereon and a certificate signed by them showing—

(*a*) whether they contain a full and true account of everything which ought to be inserted therein,

(*b*) whether the books which by any rules made under this Act are directed to be kept by the Administrator-General, have been duly and regularly kept, and

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* Act 2 of 1874 † 55 & 56 Vict, C. 57

‡ Certain words after this repealed by Act 21 of 1922 have been omitted.

§ Certain words after this have been omitted by Act 21 of 1922.

(*c*) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any rules made thereunder,

or (as the case may be) that such accounts are deficient, or that the Administrator-General has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate.

Notes.—This section lays down the duties of an auditor.

Power of auditors to summon and examine witnesses, and to call for documents.

46. (1) Every auditor shall have the powers of a Civil Court under the Code of Civil Procedure, 1908, *

(*a*) to summon any person whose presence he thinks necessary to attend him from time to time; and

(*b*) to examine any person on oath to be by him administered; and

(*c*) to issue a commission for the examination on interrogatories or otherwise of any person; and

(*d*) to summon any person to produce any document or thing the production of which appears to be necessary for the purpose of such audit or examination.

(2) Any person who when summoned refuses, or without reasonable cause, neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined, shall be deemed to have committed an offence within the meaning of, and punishable under, section 188 of the Indian Penal Code, † and the auditor shall report every case of such refusal or neglect to Government.

Notes—Under this section the auditor is given wide powers. He is invested with the powers of a Civil Court under the Civil Procedure Code to summon and examine witnesses on oath He can also issue a Commission for the examination of any person and can summon any person to produce any document. Any person who refuses to attend or to be sworn is punishable under section 188 of the Indian Penal Code. Every facility is given to an auditor for successfully auditing the accounts.

Costs of audit, etc.

47. The costs of and incidental to such audit and examination shall be determined in accordance with rules made by the Government, and shall be defrayed in the prescribed manner.

PART VI.

MISCELLANEOUS.

General powers of administration.

48. The Administrator-General may, in addition to and not in derogation of, any other powers of expenditure lawfully exercisable by him, incur expenditure—

(*a*) on such acts as may be necessary for the proper care and management of any property belonging to any estate in his charge; and

(*b*) with the sanction of the High Court at the Presidency-town on such religious, charitable and other objects, and on such improvements as may be reasonable and proper in the case of such property.

Notes—Even under the old law although a trustee is allowed nothing for his [illegible] ;nses out of pocket. *How* v. *Godfrey*, [illegible] *Hide* v. *Haywood*, 2 Atk 126; *Caffery* [illegible] Atk. 578; *Feoffees of Heriot's Hospital* [illegible] *'larcks*, 8 Ves. 81, *Lord Eldon* said: "It [illegible] expressed in the instrument or not that [illegible] charges and expenses incurred in the execution of the trust." See also *Dawson* v. *Clark*, 18 Ves. 254.

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* Act 5 of 1908. † 45 of 1860

49. Any person interested in the administration of any estate, which is in the charge of the Administrator-General shall, subject to such conditions and restrictions as may be prescribed, be entitled at all reasonable times to inspect the accounts relating to such estate and the reports and certificates of the auditor, and on payment of the prescribed fee, to copies thereof and extracts therefrom.

Power of person beneficially interested to inspect Administrator-General's accounts, etc., and take copies.

Notes—Any person interested in the administration of any estate, is entitled at all reasonable time to inspect the accounts relating to such estate and the reports and certificates of the auditor.

50. (1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Administrator-General

Power to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the accounts to be kept by the Administrator-General and the audit and inspection thereof,

(*b*) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator-General,

(*c*) the remittance of sums of money in the hands of the Administrator-General, in cases in which such remittances are required,

(*d*) subject to the provisions of this Act, the fees to be paid under this Act, and the collection and accounting for any such fees,

(*e*) the statements, schedules and other documents to be submitted to the Government or to any other authority by the Administrator-General, and the publication of such statements, schedules or other documents,

(*f*) the realization of the cost of preparing any such statements, schedules or other such documents,*

(*g*) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed,

(*h*) the manner in which summonses issued under the provisions of section 46 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental

he official Gazette Act.

Notes—For rules under this section, *Vide Gazette of India* 1914, Part I, p. 369.

51. Whoever, during any examination authorised by this Act, makes upon oath a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding

False evidence.

Scope—It is sufficient to bring a case under this section if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly, knowing it to be false, and with the intention of deceiving the Court and of leading it to suppose that what he states is true 26 A. 506 *Vide* section 191 of the Indian Penal Code.

52. All assets in the charge of the Administrator-General which have been in his custody for a period of twelve years or upwards whether before or after the commencement of this Act without any application for

Assets unclaimed for twelve years to be transferred to Government.

* After this sub-clause (ff) was inserted by Act 10 of 1914 but has been repealed by Act 5 of 1917 and hence it is omitted.

payment thereof having been made and granted by him shall be transferred, in the prescribed manner, to the account and credit of the Government :*

Provided that this section shall not authorise the transfer of any such assets as aforesaid, if any suit or proceeding is pending in respect thereof in any court.

Notes—Under article 123 of the First Schedule of the Limitation Act, a suit for granting a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate can be brought within twelve years from the time when the legacy or share becomes payable or deliverable. *Vide Cursejee* v. *Dadi*, 19 M. 425 ; *Navroji* v. *Perojbai*, 23 B 80 ; *Kasmi* v. *Ayishanni*, 16 M. 160=1 M. L J. 754 ; *Khetramoni* v. *Dhirendra*, 41 C 271 ; *Nane* v. *Ramanund*, 2 Agra 171 ; *Maung Tun* v. *Mathil*, 44 C. 379=21 C. W. N. 527 P. C.=38 Ind Cas. 809 But when a suit has already been instituted within that period, the claim is not barred by limitation These time-barred legacies or assets in the hands of Administrator-General become the property of the Government. Hence the period of twelve years is mentioned.

Assets include both immovable and movable property. Whether assets have been "collected" depends on the facts of each case. Mere taking of letters of administration does not entitle administrator to get commission. A. I. R. 1926. Mad 1026=51 M. L J. 334=97 Ind. Cas. 722.

Mode of proceeding by claimant to recover principal money so transferred.

53. (1) If any claim is hereafter made to any part of the assets transferred to the account and credit of the Government* under the provisions of this Act, or any Act hereby repealed, and if such claim is established to the satisfaction of the prescribed authority, the Government* shall pay to the claimant the amount of the principal so transferred to its account and credit or so much thereof as appears to be due to the claimant.

(2) If the claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice [illegible] proceedings for the recovery of such assets, apply [illegible] at the Presidency-town against the Secretary of St[illegible] such Court, after taking such evidence as it thinks fit, shall make such order in regard to the payment of the whole or any part of the said principal sum as it thinks fit, and such order shall be binding on all parties to the proceeding.

(3) The Court may further direct by whom the whole or any part of the cost of each party shall be paid.

Notes—If the claim is not barred by limitation under articles 123 of the schedule [illegible] blished to the satisfaction of the prescribed [illegible] An application by petition under section [illegible] is a suit within the meaning of section 13 of the Civil Procedure Code, 1877 and is barred by the disposal of a similar former application in the same matter, though the order passed is capable of being reviewed. *Eliza Smith* v. *Secretary of State*, 3 C. 340.

District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator-General.

54. Whenever any person, other than an exempted person, dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator-General of the Presidency, stating the following particulars so far as they may be known to him :—

(*a*) the amount and nature of the assets,

(*b*) whether or not the deceased left a will and, if so, in whose custody it is.

(*c*) the names and addresses of the surviving next-of-kin of the deceased, and, on the lapse of one month from the date of the death,

* Certain words after this repealed by Act 21 of 1922 have been omitted.

(*d*) whether or not any one has applied for probate of the will of the deceased or letters of administration of his estate.

(2) The District Judge shall retain the assets under his charge, or appoint an officer under the provisions of section 239 of the Indian Succession Act, 1865,* to take and keep possession of the same until the Administrator-General has obtained letters of administration, or until some other person has obtained probate or such letters or a certificate from the Administrator-General under the provisions of this Act, when the assets shall be delivered over to the holder of such probate, letters of administration or certificate :

Provided that the District Judge may, if he thinks fit, sell any assets which are subject to speedy and natural decay, or which for any other sufficient cause he thinks should be sold, and he shall thereupon credit the proceeds of such sale to the estate.

(3) The District Judge may cause to be paid out of any assets of which he or such officer has charge, or out of the proceeds of such assets or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely :—

(*a*) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration of his estate or a certificate under this Act,

(*b*) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant,

(*c*) the relief of the immediate necessities of the family of the deceased, and

(*d*) such acts as may be necessary for the proper care and management of the assets left by the deceased,

and nothing in section 279, section 280 or section 281 of the Indian Succession Act, 1865,* or in any other law for the time being in force with respect to rights of priority of creditors of deceased person shall be held to affect the validity of any payment so caused to be made.

District Judge.—A District Judge who has under the provision of this section taken possession of the assets of a deceased person pending the happening of one or other of the events specified in this section is not the legal representative of the deceased for the purpose of the execution of a decree obtained against the deceased. *The District Judge of Azamgarh* v. *Baldeo Prosad*, A. W. N. 1899, 221

Commission is fixed on value of assets as they are ultimately distributed. A. I. R. 1922 Mad. 492=43 M L. J. 342=74 Ind Cas 182.

Succession Act and Companies Act not to affect Administrator-General, and saving of provisions of Presidency Police Acts as to petty estates.

55. (1) Nothing contained in the Indian Succession Act, 1865,* or the Indian Companies Act, 1882,† shall be taken to supersede or affect the rights, duties and privileges of any Administrator-General.

(2) Noth[illegible] 1865* or in this Act [illegible] for the time being in [illegible] dred rupees in value of persons dying intestate within any of the Presidency-towns or in the town of Rangoon, which shall be or has been taken charge of by the police for the purpose of safe custody.

Notes.—Section 100 of the Calcutta Police Act (Ben. Act IV of 1866) lays down that the police shall for the purpose of safe custody, take temporary charge of unclaimed movable property found by them Clause (1) of section 101 of the same lays down that if the said property appears to have been left by a person who has died intestate, and not to be under two hundred rupees in value, the Commissioner

* 10 of 1865, see now Act 39 of 1925.
† 6 of 1882, see now Act 7 of 1913.

of Police shall communicate with the Administrator-General with a view to its being dealt with according to the Administrator-General's Act, 1874, or any other law for the time being in force. Then clauses 2 to 6 of the same section provide the procedure of dealing with property under two hundred rupees. Similar provisions are also made by Bombay, Madras and Rangoon Police Acts.

Order of Court to be equivalent to decree.

56. Any order made under this Act by any Court shall have the same effect as a decree.

Decree—For the definition of a decree, *vide* Civil Procedure Code, section 2 (2). The term decree is defined in the Code as meaning the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines ... any of the matters in controversy in the suit. ... 133 ; *Mazaffar Ali* v. *Hedayat*, 34 C. 584 ; ... *takst* v. *Subramanya*, 11 M. 26. (35). All decrees are appealable. ... *Subramanya*, 11 M. 26 (35) = 14 I A. 160.

Provision for administration by Consular Officer in case of death in certain circumstances of foreign subject

57. Notwithstanding anything in this Act, or in any other law for the time being in force, the Governor-General in Council may, by general or special order, direct that, where a subject of a foreign State dies in British India, and it appears that there is no one in British India, other than the Administrator-General, entitled to apply to a Court of competent jurisdiction for letters of administration of the estate of the deceased, letters of administration shall, on the application to such Court of any ... granted to such Consular Officer on s... subject to any rules made in this beh... notification in the *Gazette of India*, think fit to impose.

... c. 121. "Under 24 & 25 ... Her Majesty's dominions, ... such Foreign states shall ... Court letters of administra- ... manner and for such time ... er are only to apply to the subjects of such Foreign States as shall be specified by Order in Council, with whom agreement shall have been made by treaty for securing similar rights to British subjects and British Consuls within their dominions. Apart from this statute, the law of England will not, it seems, recognise the right of a Foreign Consul to take possession of or administer the property of a foreigner dying here, who is domiciled in his own country even though none of those are otherwise entitled to object to the grant." *Foote's International Law*, 289, citing *Aspinwall* v *Queen's Proctor*, 2 Curt. 241, 247 ; *In the goods of Wyekoff*, 3 Sw. and Tr 20.

Division of Presidency into Provinces.

58. (1) Notwithstanding anything in the foregoing provisions of this Act, the Governor-General in Council may, by notification in the *Gazette of India*—

(*a*) remove any of the territories included in the Presidency of Bengal from such Presidency, and constitute the same into Provinces for the purposes of this Act ,

(*b*) direct that for the purposes of this Act any of the territories of any Native State in India shall be included in any province so constituted ; and

(*c*) appoint any person qualified in accordance with the provisions of sub section (2) of section 3 or who holds office under Government to be an Administrator-General for any such province to be called the Administrator-General of the Province,

and, subject to the provisions of this section, the following consequences shall ...

... nce shall by that ... the ... liabilities, and ...

duties, in the Province as the Administrator-General of the presidency within which such territories were included had and performed as Administrator-General therein and shall be deemed to be his successor in office :

(ii) the powers and duties of the Government under this Act shall, as regards the Province, be exercised and discharged by the Governor General in Council or by such Local Government as the Governor-General in Council may, by notification in the *Gazette of India*, appoint in this behalf ; and the Gazette of the Government exercising and discharging such powers and duties shall be the official Gazette of the Province for the purposes of this Act :

(iii) the powers and duties assigned by the foregoing provisions of this Act to the High Court shall be exercised and discharged in respect of such province by such Court as the Governor-General in Council may, by notification in the *Gazette of India*, appoint in this behalf; and probate or letters of administration granted to the Administrator-General of the Province by the Court so appointed shall have ... or, if the Court so directs, ... Bombay and Madras, or any part thereof, as probate or letters of administration granted to the Administrator-General by the High Court at a Presidency-town would or might have had :

(iv) in the foregoing provisions of this Act the word "Presidency" shall be deemed to include a Province, and the expression "Presidency-town" the place of sitting of the Court appointed by the Governor-General in Council under clause (*iii*) of this sub section :

(v) generally, the provisions of the foregoing sections of this Act with respect to the High Court as a Presidency-town and the provisions of those sections or of any other enactment with respect to the Administrator General of a Presidency shall, in relation to a Province, be construed so far as may be, to apply to the Court and Administrator-General, respectively, appointed for the province under this section.

(2) Any proceeding which was commenced before the publication of the notification constituting the Province and to or in which the Administrator-General of any Presidency within which any of the territories constituted into a Province were situate was a party or was otherwise concerned, shall be continued as if the notification had not been published.

(3) If, by reason of the constitution of Provinces for the purposes of this Act, it appears to the Governor General in Council that any property vested in the Administrator-General of any Presidency should be vested in the ...

... administration had been granted to him originally.

... have been ... vince for the ... tification in ... al excluding the territories so removed, the powers and duties of the Government under this ... ernment of Bengal, and

... a province under sub- ... again form part of the Presidency within which they were originally included, the office of Administrator-General of the Province shall determine and all properties vested in and all proceedings by or against such Administrator-General pending at the date

of the recission shall vest in and be carried on by or against such Administrator-General or Administrators-General as the Governor-General in Council may direct.

Notes—*Vide Gazette of India*, pt. I, p. 365.

Saving of provisions of Indian Registration Act, 1908.

59. Nothing in this Act shall be deemed to affect the provisions of the Indian Registration Act, 1908.*

Notes—The documents which require registration under that Act must be registered.

60. Repeals. (*Repealed by Act 12 of 1917.*)

Repeal—Repeal does not affect acts done under the Repealed Act.

THE SCHEDULE.

Repealed by Act 12 of 1927.

THE AGRICULTURISTS' LOANS ACT, 1884.

ACT NO. XII OF 1884.

RECEIVED THE G. G's ASSENT ON THE 24TH JULY, 1884.†

An Act to amend and provide for the extension of the Northern India Takkavi Act, 1879.

Preamble.

WHEREAS it is expedient to amend the Northern India Takkavi Act, 1879,‡ and provide for its extension to any part of British India; It is hereby enacted as follows:—

Short title.

1. (1) This Act may be called the Agriculturists' Loans Act, 1884; and

Commencement.

(2) It shall come into force on the first day of August, 1884.

Local extent.

2. (1) This section and section 3 extend to the whole of British India.

(2) The rest of this Act extends in the first instance only to the territories [illegible] the Governor of Bombay in Council, the Lieutenant-[illegible] Provinces and the Punjab, and the Chief [illegible]al Provinces, Assam and Ajmer.

(3) But any other Local Government may, from time to time, by notification in the official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration.

Repeal of Act X of 1879, and sections 4 and 5 of Act XV of 1880.

3. (1) On and from the day on which this Act comes into force, the Northern India Takkavi Act, 1879,‡ and sections 4 and 5 of the Bombay Revenue Jurisdiction Act, 1880§, shall, except as regards the recovery of advances made before this Act comes into force and of the interest thereon, be repealed.

(2) All rules made under those Acts shall be deemed to be made under this Act.

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* XVI of 1908

† This Act has been declared to be in force in Upper Burma (except the Shan States) by Act XXII of 1898, s 4.

‡ X of 1879

§ XV of 1880

duties, in the Province as the Administrator-General of the presidency within which such territories were included had and performed as Administrator-General therein and shall be deemed to be his successor in office :

(ii) the powers and duties of the Government under this Act shall, as regards the Province, be exercised and discharged by the Governor-General in Council or by such Local Government as the Governor-General in Council may, by notification in the *Gazette of India*, appoint in this behalf ; and the Gazette of the Government exercising and discharging such powers and duties shall be the official Gazette of the Province for the purposes of this Act :

(iii) the powers and duties assigned by the foregoing provisions of this Act to the High Court shall be exercised and discharged in respect of such province by such Court as the Governor-General in Council may, by notification in the *Gazette of India*, appoint in this behalf; and probate or letters of administration granted to the Administrator-General of the Province by the Court so appointed shall have the same effect throughout the Province, or, if the Court so directs, throughout the Presidencies of Bengal, Bombay and Madras, or any part thereof, as probate or letters of administration granted to the Administrator-General by the High Court at a Presidency-town would or might have had :

(iv) in the foregoing provisions of this Act the word "Presidency" shall be deemed to include a Province, and the expression "Presidency-town" the place of sitting of the Court appointed by the Governor-General in Council under clause (*iii*) of this sub section :

(v) generally, the provisions of the foregoing sections of this Act with respect to the High Court as a Presidency-town and the provisions of those sections or of any other enactment with respect to the Administrator General of a Presidency shall, in relation to a Province, be construed so far as may be, to apply to the Court and Administrator-General, respectively, appointed for the province under this section.

(2) Any proceeding which was commenced before the publication of the notification constituting the Province and to or in which the Administrator-General of any Presidency within which any of the territories constituted into a Province were situate was a party or was otherwise concerned, shall be continued as if the notification had not been published.

(3) If, by reason of the constitution of Provinces for the purposes of this Act, it appears to the Governor General in Council that any property vested in the Administrator-General of any Presidency should be vested in the [illegible]

administration had been granted to him originally.

(4) If in accordance with the provisions of this section territories have been removed from the Presidency of Bengal and constituted a province for the purposes of this Act, the Governor-General in Council may, by notification in the *Gazette of India*, direct that as regards the Presidency of Bengal excluding the territories so removed, the powers and duties of the Government under this [illegible] ernment of Bengal, and

[illegible] a province under sub-[illegible] again form part of the Presidency within which they were originally included, the office of Administrator-General of the Province shall determine and all properties vested in and all proceedings by or against such Administrator-General pending at the date

of the recission shall vest in and be carried on by or against such Administrator-General or Administrators-General as the Governor-General in Council may direct.

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60. Repeals. (*Repealed by Act 12 of 1917.*)

Repeal —Repeal does not affect acts done under the Repealed Act.

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Preamble.

WHEREAS it is expedient to amend the Northern India Takkavi Act, 1879,‡ and provide for its extension to any part of British India; It is hereby enacted as follows:—

Short title.

1. (1) This Act may be called the Agriculturists' Loans Act, 1884; and

Commencement.

(2) It shall come into force on the first day of August, 1884.

Local extent.

2. (1) This section and section 3 extend to the whole of British India.

(2) The rest of this Act extends in the first instance only to the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmer.

(3) But any other Local Government may, from time to time, by notification in the official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration.

Repeal of Act X of 1879, and sections 4 and 5 of Act XV of 1880.

3. (1) On and from the day on which this Act comes into force, the Northern India Takkavi Act, 1879,‡ and sections 4 and 5 of the Bombay Revenue Jurisdiction Act, 1880§, shall, except as regards the recovery of advances made before this Act comes into force and of the interest thereon, be repealed.

(2) All rules made under those Acts shall be deemed to be made under this Act.

* XVI of 1908

† This Act has been declared to be in force in Upper Burma (except the Shan States) by Act XXII of 1898, s. 4

‡ X of 1879

§ XV of 1880

Power for Local Government to make rules.

4 (1) The Local Government* "or in a province for which there is a Board of Revenue or Financial Commissioner, such Board or Financial Commissioner, subject to the control of the Local Government" may, from time to time,† make rules as to loans to be made to owners and occupiers of arable land for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act,‡ 1883, but connected with agricultural objects.

(2) All such rules shall be published in the local official Gazette.

Recovery of loans.

5. Every loan made in accordance with such rules, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue or costs incurred in recovering the same due by the person to whom the loan was made or by his surety.

Liability of joint borrowers as among themselves.

6. When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan, and is signed, marked, or sealed by each of them or his agent duly authorized in this behalf and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

THE BENGAL ALLUVION AND DILUVION REGULATION, 1825.

REGULATION XI OF 1825.

PASSED ON THE 26TH MAY, 1825.

A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion, or by dereliction of a river or the sea.

Preamble.

1. IN consequence of the frequent changes which take place in the channel of the principal rivers that intersect the Provinces immediately subject to the Presidency of Fort William, and the shifting of the sands which lie in the beds of those rivers, chars or small islands are often thrown up by alluvion in the midst of the stream, or near one of the banks, and large portions of land are carried away by an encroachment of the river on one side whilst accessions of land are at the same time or in subsequent years, gained by dereliction of the water on the opposite side: similar instances of alluvion, encroachment and dereliction also sometime occur on the sea-coast which borders the southern and south-eastern limits of Bengal,

The lands gained from the rivers or sea by the means abovementioned are a frequent source of contention and affray, and, although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the Courts of Justice have some times found it difficult

* Certain words after this repealed by Act IV of 1914 have been omitted

† The words within quotation have been inserted by Act IV of 1914 but these words shall be deemed to be omitted in the United Provinces. *Vide* U. P. Act XII of 1922, Sch

‡ XIX of 1883.

to determine the rights of litigant parties claiming chars or other lands gained in the manner above described.

The Court of Sadar Dewani Adalat, with a view to ascertain the legal provision of the Muhammadan and Hindu laws on this subject, called for reports from their law-officers of each persuasion, and on consideration of the reports furnished by the law-officers in consequence, as well as of the decisions which have been passed by the Court of Sadar Dewani Adalat in cases brought before them in appeal, which involved the rights of claimants to lands gained by alluvion, or by dereliction of rivers or the sea, the Governor-General in Council has deemed it proper to enact the following rules for the general information of individuals as well as for the guidance of the Courts of Judicature; to be in force, as soon as promulgated, throughout the whole of the Provinces subject to the Presidency of Fort William.

Notes.—This regulation is in force throughout the old Bengal Presidency and the old North-Western Provinces except the Scheduled Districts. It is also in force in the Santhal Parganas, in the Punjab, in the Central Provinces, in Oudh and in Assam except the North Lushai Hills.

It is supplemented (in the former Province of Bengal), by Ben. Act 4 of 1864; in Bengal by Ben. Act 5 of 1920.

Claims and disputes as to alluvial lands to be decided by usage when clearly recognized and established.

2. Whenever any clear and definite usage of *shaikast paiwast* respecting the disjunction and junction of land by the encroachment or recess of a river may have been immemorially established, for determining the rights of the proprietors of two or more contiguous estates divided by a river (such as that the main channel of the river dividing the estates shall be the constant boundary between them, whatever changes may take place in the course of the river, by encroachment on one side and accession on the other), the usage so established shall govern the decision of all claims and disputes relative to alluvial land between the parties whose estates may be liable to such usage.

Where no usage established, claims how decided

3 Where there may be no local usage of the nature referred to in the preceding section, the general rules declared in the following section shall be applied to the determination of all claims and disputes relative to lands gained by alluvion or by dereliction either of a river or the sea.

Lands gained by gradual accession from recess of river or sea.

4. *First.*—When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from Government by a Zamindar or other superior landholder, or as a subordinate tenure, by any description of under tenant whatever:

Extent of interest in increment of person in possession.

Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed, to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II, 1819,* or of any other Regulation in force.

Nor if annexed to a subordinate tenure held under a superior landholder shall the under-tenant, whether a khudkast raiyat holding a maurusi istimrari tenure at a fixed rate of rent per bigha, or any other description of under-tenant

* Ben. Reg. II of 1819 was repealed in Assam by the Assam Land and Revenue Regulation (I of 1886).

liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable.*

When river by sudden change of course intersects estates.

Second.—The above rule shall not be considered applicable to cases in which a river, by a sudden change of its course, may break through and intersect an estate, without any gradual encroachment, or may by the violence of stream, separate a considerable piece of land from one estate, and join it to another estate without destroying the indentity and preventing the recognition of the land so removed.

In such cases the land, on being clearly recognized shall remain the property of its original owner.

Chars thrown up in navigable river or sea.

Third.—When a char, or island, may be thrown up in a large navigable river (the bed of which is not the property of an individual), or in the sea, and the channel of the river, or sea, between such island and the shore *may not be fordable, it shall*, according to established usage, be at the disposal of Government.†

Property therein when channel fordable.

But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land, tenure, or tenures of the person or persons whose estate or estates may be most contiguous to it, subject to the several provisions specified in the first clause of this section, with respect to increment of land by gradual accession.

Char etc. thrown up in small shallow rivers.

Fourth.—In small and shallow rivers the beds of which, with the jalkar right of fishery, may have been heretofore recognized as the property of individuals, any sand bank or char, that may be thrown up, shall, as hitherto, belong to the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section.

Disputes relative to lands gained by alluvion or by dereliction not provided for by Regulation.

Fifth.—In all other cases, namely, in all cases of claims and disputes respecting land gained by alluvion or by dereliction of a river, or the sea, which are not specifically provided for by the rules contained in this Regulation, the Courts of Justice, in deciding upon such claims and disputes, shall be guided by the best evidence they may be able to obtain of established local usage, if there be any applicable to the case, or if not, by general principles of equity and justice.

Encroachments on beds of navigable rivers and other obstructions

5. Nothing in this Regulation shall be construed to justify any encroachments by individuals on the bed or channels of navigable rivers, or to prevent Zila ‡ Magistrates or any other officers of G...

obstacle, which appear to int...

such rivers, or which shall in any respect obstruct the passage of boats by tracking on the banks of such rivers or otherwise.

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* This para of s. 4 *cl.* (1), was repealed in Bengal except Calcutta, Orissa and the Scheduled D... of 1885), s. 2.

... by the Assam Land and

... t I of 1903.

THE ANAND MARRIAGE ACT, 1909.

ACT NO VII OF 1909.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the G. G's Assent on the 22nd October 1909.

An Act to remove Doubts as to the Validity of the Marriage Ceremony common among the Sikhs called Anand.

WHEREAS it is expedient to remove any doubts as to the validity of the marriage ceremony common among the Sikhs called Anand; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Anand Marriage Act, 1909 ; and

(2) It extends to the whole of British India.

Validity of Anand marriages.

2. All marriages which may be or may have been duly solemnized according to the Sikh marriage ceremony called Anand shall be, and shall be deemed to have been with effect from the date of the solemnization of each respectively, good and valid in law.

Exemption of certain marriages from Act.

3 Nothing in the Act shall apply to—

(*a*) any marriage between persons not professing the Sikh religion, or

(*b*) any marriage which has been judicially declared to be null and void.

Saving of marriages solemnized according to other ceremonies.

4. Nothing in this Act shall affect the validity of any marriage duly solemnized according to any other marriage ceremony customary among the Sikhs.

Non-validation of marriages within prohibited degrees.

5. Nothing in this Act shall be deemed to validate any marriage between persons who are related to each other in any degree of consanguinity or affinity which would, according to the customary law of the Sikhs render a marriage between them illegal.

THE ANCIENT MONUMENTS PRESERVATION ACT, 1904

ACT NO. VII OF 1904.

RECEIVED THE G. G'S ASSENT ON THE 18TH MARCH, 1904.

An Act to provide for the preservation of Ancient Monuments and of objects of archæological, historical or artistic interest.

WHEREAS it is expedient to provide for the preservation of ancient monuments, for the exercise of control over traffic in antiquities and over excavation in certain places, and for the protection and acquisition in certain cases of ancient monuments and of objects of archæological, historical or artistic interest ; It is hereby enacted as follows :—

Short title and extent

1. This Act may be called the Ancient [illegible]

(2 [illegible]
the S[illegible]

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "ancient monument," means any structure, erection or monument, or any tumulus or place of internment or any cave, rock-sculpture, inscription or monolith which is of historical, archæological or artistic interest, or any remains thereof, and includes—

(a) the site of an ancient monument;
(b) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or othewise preserving such monument; and
(c) the means of access to and convenient inspection of an ancient monument:

(2) "antiquities" include any movable objects which the Government, by reason of their historical or archæological associations, may think it necessary to protect against injury, removal or dispersion:

(3) "Commissioner" includes any officer authorized by the Local Government to perform the duties of a Commissioner under this Act:

(4) "maintain" and "maintenance" include the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto:

(5) "land" includes a revenue-free estate, a revenue-paying estate, and a permanent transferable tenure, whether such estate or tenure be subject [illegible]

[illegible] invested with powers of management [illegible] owners and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner and the successor in office of any such manager or trustee:

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

Protected monuments.

3. (1) The Local Government may, by notification in the local official Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.

(2) A copy of every notification published under sub section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the Local Government within one month from the date when it is so fixed up, will be taken into consideration.

(3) On the expiry of the said period of one month, the Local Government, after considering the objections, if any, shall confirm or withdraw the notification.

(4) A notification published under this section shall, unless and *until it* is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this act.

Ancient Monuments.

Acquisitions of rights in or guardianship of an ancient monument.

4. (1) The Collector, with the sanction of the Local Government, may purchase or take a lease of any protected monument.

(2) The Collector, with the like sanction, may accept a gift or bequest of any protected monument.

(3) The owner of any protected monument may by written instrument constitute the Commissioner the guardian of the monument, and the Commis-

sioner may, with the sanction of the Local Government, accept such guardianship.

(4) When the Commissioner has accepted the guardianship of a monument under sub section (3), the owner shall, except as expressly provided in this act, have the same estate, right, title and interest in and to the monument as if the Commissioner had not been constituted guardian thereof.

(5) When the Commissioner has accepted the guardianship of a monument under sub section (3), the provisions of this Act relating to agreements executed under section 5 shall apply to the written instrument executed under the said sub-section.

(6) Where a protected monument is without an owner, the Commissioner may assume the guardianship of the monument.

Preservation of ancient monument by agreement.

5. (1) The Collector may, with the previous sanction of the Local Government, propose to the owner to enter into an agreement with the Secretary of State for India in Council for the preservation of any protected monnment in his district

(2) An agreement under this section may provide for the following matters, or for such of them as it may be found expedient to include in the agreement :—

(*a*) the maintenance of the monument ;

(*b*) the custody of the monument, and the duties of any person who may be employed to watch it ,

(*c*) the restriction of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument ,

(*d*) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the Collector to inspect or maintain the monument ;

(*e*) the notice to be given to the Government in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the Government to purchase such land, or any specified portion of such land, at its market-value ,

(*f*) the payment of any expenses incurred by the owner or by the *Government in connection with the preservation of the monument* ,

(*g*) the proprietary or other rights which are to vest in His Majesty in respect of the monument when any expenses are incurred by the Government in connection with the preservation of the monument ;

(*h*) the appointment of an authority to decide any dispute arising out of the agreement ; and

(*i*) any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the Government.

(3) An agreement under this section may be executed by the Collector on behalf of the Secretary of State for India in Council, but shall not be so executed until it has been approved by the Local Government.

(4) The terms of an agreement under this section may be altered from time to time with the sanction of the Local Government and with the consent of the owner.

(5) With the previous sanction of the Local Government, the Collector may terminate an agreement under this section on giving six months' notice in writing to the owner.

(6) The owner may terminate an agreement under this section on giving six months' notice to the Collector.

(7) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(8) Any rights acquired by Government in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

Owners under disability or not in possession.

6. (1) If the owner is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by section 5.

(2) In the case of village-property, the headman or other village-officer exercising powers of management over such property may exercise the power conferred upon an owner by section 5.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

Enforcement of agreement.

7. (1) If the Collector apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface, or imperil the monument or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 5, the Collector may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5 refuses to do any act which is in the opinion of the Collector necessary to such preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the Collector, the Collector may authorize any person to do any such act, and the expense of doing any such act of such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land-revenue.

(3) A person aggrieved by an order made under this section may appeal to the Commissioner who may cancel or modify it and whose decision shall be final.

Purchasers at certain sales and persons claiming through owner bound by instrument executed by owner.

8. Every person who purchases, at a sale for arrears of land-revenue or any other public demand, or at a sale made under the Bengal Putni Taluks Regulation, 1819* an estate or tenure in which is situated a monument in respect of which any instrument has been executed by the owner for the time being, under section 4 or section 5 and every person claiming any title to a monument from, through or under an owner who executed any such instrument, shall be bound by such instrument.

Application of endowment to repair of an ancient monument.

9. (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, refuses or fails to enter into such an agreement when proposed to him by the Collector, and if any endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others, the Collector may institute a suit in the Court of the District Judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an

* Act VIII of 1819.

application to the District Judge for the proper application of such endowment or part thereof.

(2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass an order for the proper application of the endowment or of any part thereof, and any such order may be executed as if it were the decree of a Civil Court.

Compulsory purchase of ancient monument.

10. (1) If the Local Gove [illegible] proceed to acquire it under the provisions of the Land Acquisition Act, 1894,* as if the preservation of a protected monument were a "public purpose" within the meaning of that Act

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of—

(*a*) any monument which or any part of which is periodically used for religious observances, or

(*b*) any monument which is the subject of a subsisting agreement executed under section 5.

(3) In any case other than the cases referred to in sub-section (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed, within such reasonable period as the Collector may fix in this behalf to enter into an agreement proposed to him under the said section or has terminated or given notice of his intention to terminate such an agreement.

Power of Local Government to control mining, etc, near ancient monument.

†"**10A.** (1) If the Local Government is of opinion that mining, quarrying, excavating, blasting and other operations of a like nature should be restricted or regulated for the purpose of protecting or preserving any ancient monument, the Local Government may, by notification in the local official Gazette, make rules—

(*a*) fixing the boundaries of the area to which the rules are to apply,

(*b*) forbidding the carrying on of mining, quarrying, excavating, blasting or any operation of a like nature except in accordance with the rules and with the terms of a licence, and

(*c*) prescribing the authority by which, and the terms on which, licences may be granted to carry on any of the said operations.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which may extend to two hundred rupees.

(4) If any owner or occupier of land included in a notification under sub section (1) proves to the satisfaction of the Local Government that he has sustained loss by reason of such land being so included, the Local Government shall pay compensation in respect of such loss."

Notes.—"This clause amounts to little more than a transposition of the existing section 10 Advantage has been taken of the amendment of the Act, however, to make it clear that this section covers mining, quarrying, blasting and other operations which may endanger an ancient monument and to make it clear that these operations are forbidden in any area notified under the section except in accordance with a licence granted for the purpose."—*Notes on Clauses.*

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* Act I of 1894. † Inserted by Act 18 of 1932.

(7) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(8) Any rights acquired by Government in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

Owners under disability or not in possession.

6. (1) If the owner is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by section 5.

(2) In the case of village-property, the headman or other village-officer exercising powers of management over such property may exercise the power conferred upon an owner by section 5.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

Enforcement of agreement.

7. (1) If the Collector apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface, or imperil the monument or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 5, the Collector may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5 refuses to do any act which is in the opinion of the Collector necessary to such preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the Collector, the Collector may authorize any person to do any such act, and the expense of doing any such act of such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land-revenue.

(3) A person aggrieved by an order made under this section may appeal to the Commissioner who may cancel or modify it and whose decision shall be final.

Purchasers at certain sales and persons claiming through owner bound by instrument executed by owner.

8. Every person who purchases, at a sale for arrears of land-revenue or any other public demand, or at a sale made under the Bengal Putni Taluks Regulation, 1819* an estate or tenure in which is situated a monument in respect of which any instrument has been executed by the owner for the time being, under section 4 or section 5 and every person claiming any title to a monument from, through or under an owner who executed any such instrument, shall be bound by such instrument.

Application of endowment to repair of an ancient monument.

9. (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, refuses or fails to enter into such an agreement when proposed to him by the Collector, and if any endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others, the Collector may institute a suit in the Court of the District Judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an

* Act VIII of 1819.

application to the District Judge for the proper application of such endowment or part thereof.

(2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass an order for the proper application of the endowment or of any part thereof, and any such order may be executed as if it were the decree of a Civil Court.

Compulsory purchase of ancient monument.

10. (1) If the Local Government apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, the Local Government may proceed to acquire it under the provisions of the Land Acquisition Act, 1894,* as if the preservation of a protected monument were a "public purpose" within the meaning of that Act.

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of—

(*a*) any monument which or any part of which is periodically used for religious observances, or

(*b*) any monument which is the subject of a subsisting agreement executed under section 5.

(3) In any case other than the cases referred to in sub-section (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed, within such reasonable period as the Collector may fix in this behalf to enter into an agreement proposed to him under the said section or has terminated or given notice of his intention to terminate such an agreement.

Power of Local Government to control mining, etc, near ancient monument.

†"**10A.** (1) If the Local Government is of opinion that mining, quarrying, excavating, blasting and other operations of a like nature should be restricted or regulated for the purpose of protecting or preserving any ancient monument, the Local Government may, by notification in the local official Gazette, make rules—

(*a*) fixing the boundaries of the area to which the rules are to apply,

(*b*) forbidding the carrying on of mining, quarrying, excavating, blasting or any operation of a like nature except in accordance with the rules and with the terms of a licence, and

(*c*) prescribing the authority by which, and the terms on which, licences may be granted to carry on any of the said operations.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which may extend to two hundred rupees.

(4) If any owner or occupier of land included in a notification under sub section (1) proves to the satisfaction of the Local Government that he has sustained loss by reason of such land being so included, the Local Government shall pay compensation in respect of such loss."

Notes.—"This clause amounts to little more than a transposition of the existing section 10. Advantage has been taken of the amendment of the Act, however, to make it clear that this section covers mining, quarrying, blasting and other operations which may endanger an ancient monument and to make it clear that these operations are forbidden in any area notified under the section except in accordance with a licence granted for the purpose."—*Notes on Clauses.*

* Act I of 1894. † Inserted by Act 18 of 1932.

(7) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(8) Any rights acquired by Government in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

Owners under disability or not in possession.

6. (1) If the owner is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by section 5.

(2) In the case of village-property, the headman or other village-officer exercising powers of management over such property may exercise the power conferred upon an owner by section 5.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

Enforcement of agreement.

7. (1) If the Collector apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface, or imperil the monument or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 5, the Collector may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5 refuses to do any act which is in the opinion of the Collector necessary to such preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the Collector, the Collector may authorize any person to do any such act, and the expense of doing any such act of such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land-revenue

(3) A person aggrieved by an order made under this section may appeal to the Commissioner who may cancel or modify it and whose decision shall be final.

Purchasers at certain sales and persons claiming through owner bound by instrument executed by owner

8. Every person who purchases, at a sale for arrears of land-revenue or any other public demand, or at a sale made under the Bengal Putni Taluks Regulation, 1819* an estate or tenure in which is situated a monument in respect of which any instrument has been executed by the owner for the time being, under section 4 or section 5 and every person claiming any title to a monument from, through or under an owner who executed any such instrument, shall be bound by such instrument.

Application of endowment to repair of an ancient monument.

9 (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, refuses or fails to enter into such an agreement when proposed to him by the Collector, and if any endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others, the Collector may institute a suit in the Court of the District Judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an

* Act VIII of 1819.

application to the District Judge for the proper application of such endowment or part thereof.

(2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass an order for the proper application of the endowment or of any part thereof, and any such order may be executed as if it were the decree of a Civil Court.

Compulsory purchase of ancient monument.

10. (1) If the Local Government apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, the Local Government may proceed to acquire it under the provisions of the Land Acquisition Act, 1894,* as if the preservation of a protected monument were a "public purpose" within the meaning of that Act

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of—

(*a*) any monument which or any part of which is periodically used for religious observances ; or

(*b*) any monument which is the subject of a subsisting agreement executed under section 5.

(3) In any case other than the cases referred to in sub-section (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed, within such reasonable period as the Collector may fix in this behalf to enter into an agreement proposed to him under the said section or has terminated or given notice of his intention to terminate such an agreement.

Power of Local Government to control mining, etc., near ancient monument.

†"10A. (1) If the Local Government is of opinion that mining, quarrying, excavating, blasting and other operations of a like nature should be restricted or regulated for the purpose of protecting or preserving any ancient monument, the Local Government may, by notification in the local official Gazette, make rules—

(*a*) fixing the boundaries of the area to which the rules are to apply,

(*b*) forbidding the carrying on of mining, quarrying, excavating, blasting or any operation of a like nature except in accordance with the rules and with the terms of a licence, and

(*c*) prescribing the authority by which, and the terms on which, licences may be granted to carry on any of the said operations.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which may extend to two hundred rupees.

(4) If any owner or occupier of land included in a notification under sub section (1) proves to the satisfaction of the Local Government that he has sustained loss by reason of such land being so included, the Local Government shall pay compensation in respect of such loss."

Notes —"This clause amounts to little more than a transposition of the existing section 10 Advantage has been taken of the amendment of the Act, however, to make it clear that this section covers mining, quarrying, blasting and other operations

. . . .

* Act I of 1894.

† Inserted by Act 18 of 1932.

Maintenance of certain protected monuments.

11. (1) The Commissioner shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in section 4 or which the Government has acquired under section 10.

(2) When the Commissioner has accepted the guardianship of a monument under section 4, he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times, by himself and by his agent, subordinates and workmen, for the purpose of inspecting the monument, and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof.

Voluntary contributions.

12. The Commissioner may receive voluntary contributions towards the cost of maintaining a protected monument and may give orders as to the management and application of any funds so received by him :

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

Protection of place of worship from misuse, pollution or desecration.

13. (1) A place of worship or shrine maintained by the Government under this Act shall not be used for any purpose inconsistent with its character.

(2) Where the Collector has, under section 4, purchased or taken a lease of any protected monument, or has accepted a gift or bequest, or the Commissioner has, under the same section, [illegible] such monument, or any part thereof, [illegible] or observances by any community, the [illegible] the protection of such monument, or such part thereof, from pollution or desecration—

(*a*) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or

(*b*) by taking such other action as he may think necessary in this behalf.

Relinquishment of Government rights in a monument.

14. With the sanction of the Local Government, the Commissioner may—

(*a*) where rights have been acquired by Government in respect of any monument under this Act by virtue of any sale, lease, gift or will, relinquish the right so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired ; or

(*b*) relinquish any guardianship of a monument which he has accepted under this Act.

Right of access to certain protected monuments.

15. (1) Subject to such rules as may after previous publication be made by the Local Government, the public shall have a right of access to any monument maintained by the Government under this Act.

(2) In making any rule under sub section (1) the Local Government may provide that a breach of it shall be punishable with fine which may extend to twenty rupees.

Penalties.

16. Any person other than the owner who destroys, removes, injures, alters, defaces or imperils a protected monument, and any owner who destroys, removes, injures, alters, efaces or imperils a monument maintained by Government under this Act or in respect of which an agreement has been executed under section 5, and

any owner or occupier who contravenes an order made under section 7, sub-section (1), shall be punishable with fine which may extend to five thousand rupees, or with imprisonment which may extend to three months, or with both.

Traffic in Antiquities.

Power to Governor-General in Council to control traffic in antiquities.

17. (1) If the Governor-General in Council apprehends that antiquities are being sold or removed to the detriment of India or of any neighbouring country he may, by notification in the *Gazette of India*, prohibit or restrict the bringing or taking by sea or by land of any antiquities or class of antiquities described in the notification into or out of British India or any specified part of British India.

(2) Any person who brings or takes or attempts to bring or take any such antiquities into or out of British India or any part of British India in contravention of a notification issued under sub section (1) shall be punisable with fine which may extend to five hundred rupees.

(3) Antiquities in respect of which an offence referred to in sub-section (2) has been committed shall be liable to confiscation.

(4) An officer of Customs, or an officer of Police of a grade not lower than Sub Inspector, duly empowered by the Local Government in this behalf, may search any vessel, cart or any other means of conveyance and may open any baggage or package of goods if he has reason to believe that goods in respect of which an offence has been committed under sub-section (2) are contained therein.

(5) A person who complains that the power of search mentioned in sub-section (4) has been vexatiously or improperly exercised may address his complaint to the Local Government and the Local Government shall pass such order and may award such compensation, if any, as appears to it to be just.

Protection of Sculptures, Carvings, Images, Bas-reliefs, Inscriptions or like objects.

Power to Local Government to control moving of sculptures, carvings or like objects.

18. If the Local Government considers that any sculptures, carvings, images, bas reliefs, inscriptions or other like objects ought not to be moved from the place where they are without the sanction of the Government, the Local Government may by notification in the local official Gazette, direct that any such object or any class of such objects shall not be moved unless with the written permission of the Collector.

(2) A person applying for the permission mentioned in sub-section (1) shall specify the object or objects which he proposes to move and shall furnish, in regard to such object or objects, any information which the Collector may require.

(3) If the Collector refuses to grant such permission, the applicant may appeal to the Commissioner whose decision shall be final.

(4) Any person who moves any object in contravention of a notification issued under sub section (1) shall be punishable with fine which may extend to five hundred rupees.

(5) If the owner of any property proves to the satisfaction of the Local Government that he has suffered any loss or damage by reason of the inclusion of such property in a notification published under sub-section (1) the Local Government shall either—

(*a*) exempt such property from the said notification;

(*b*) purchase such property, if it be movable, at its market-value; or

(*c*) pay compensation for any loss or damage sustained by the owner of such property, if it be immovable.

Purchase of sculptures, carvings or like objects by the Government.

19. (1) If the Local Government apprehends that any object mentioned in a notification issued under section 18, sub-section (1), is in danger of being destroyed, removed, injured or allowed to fall into decay, the Local Government may pass orders for the compulsory purchase of such object at its market-value, and the Collector shall thereupon give notice to the owner of the object to be purchased.

(2) The power of compulsory purchase given by this section shall not extend to—

(*a*) any image or symbol actually used for the purpose of any religious observance; or

(*b*) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors or to any member of his family.

"Archæological Excavation.

Power of Governor-General in Council to notify areas as protected.

***20.** (1) If the Governor-General in Council, after consulting the Local Government, is of opinion that excavation for archæological purposes in any area should be restricted and regulated in the interests of archæological research, the Governor-General in Council may, by notification in the *Gazette of India* specifying the boundaries of the area, declare it to be a protected area.

(2) From the date of such not[illegible] tected area shall be the property of G[illegible] the possession of the Government, [illegible] possession of Government until ownership thereof is transferred; but in all other respects the rights of any owner or occupier of land in such area shall not be affected.

Power to enter upon and make excavations in a protected area.

***20A.** (1) Any officer of the Archæological Department or any person holding a licence under section 20B may, with the written permission of the Collector, enter upon and make excavations in any protected area.

(2) Where, in the exercise of the power conferred by sub-section (1) the rights of any person are infringed by the occupation or disturbance of the surface of any land, the Government shall pay to that person compensation for the infringement.

Power of Governor-General in Council to make rules regulating archæological excavation in protected areas.

***20B.** (1) The Governor-General in Council may make rules—

(*a*) prescribing the authorities by whom licences to excavate for archæological purposes in a protected area may be granted;

(*b*) regulating the conditions on which such licences may be granted, the form of such licences, and the taking of security from licensees;

(*c*) prescribing the manner in which antiquities found by a licensee shall be divided between Government and the licensee; and

(*d*) generally to carry out the purposes of section 20.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) Such rules may be general for all protected areas for the time being, or may be special for any particular protected area or areas.

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*Substituted by Act 18 of 1932.

(4) Such rules may provide that any person committing a breach of any rule or of any condition of a licence shall be punishable with fine which may extend to five thousand rupees, and may further provide that where the breach has been by the agent or servant of a licensee the licensee himself shall be punishable.

Power to acquire a protected area.

*20C. If the Governor General in Council is of opinion that a protected area contains an ancient monument or antiquities of national interest and value, he may direct the Local Government to acquire such area, or any part thereof, and the Local Government may thereupon acquire such area or part under the Land Acquisition Act, 1894, † as for a public purpose."

Notes—"The Ancient Monuments Preservation Act, 1904 (VII of 1904) does no

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to restricting or regulating operations such as mining, quarrying or blastings, which menace the safety of an ancient monument Experience of countries, such as Egypt and Mesopotamia, show

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controlled both as regards the conduct of exploration and excavation and the disposal of the antiquities that may be discovered as a result of them. The draft Bill to amend the Act purports to achieve the objects"—*Statement of Objects and Reasons.*

"The Act proposes to fill the space left by the transposition of section 20 as section 10 A by inserting three new sections relating to archæological excavation, that is, excavation for the purpose of disclosing an ancient monument or of unearthing buried antiquities Proposed section 20 gives the Governor-General in Council, after consulting the Local Government power to declare any area to be a protected area, and vests all rights in antiquities found in such area in Government Any persons removing an antiquity from a protected area will be guilty of theft. Proposed section 20A gives the Governor-General in Council power to make rules to regulate excavation in protected areas and to regulate the division of all antiquities found between Government and the licensee. Proposed section 20B will enable Government to acquire any land in which there have been important archæological discoveries, in order that the area may be properly developed, either by Government's own agencies or by licensees, or by both."—*Notes on Clauses*

Section 20.—"The intention of the prososed section 20 is that when the Governor-General in Council has reason to believe that antiquities exist in any area, he should be empowered to protect

them for the benefit of the r

him to declare the area to be

all antiquities buried in the area

ever, to interfere in any other ways with the rights of the owners or occupiers of land in the protected area, such as their rights to sink wells, excavate foundations for buildings, so on We consider that the section does not bring this out sufficiently clearly and we have amended it accordingly. We have made a consequential amend-

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ers of the Governor-General

ation for archæological pur-

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* Substituted by Act 18 of 1932 † Act I of 1894.

Purchase of sculptures, carvings or like objects by the Government.

19. (1) If the Local Government apprehends that any object mentioned in a notification issued under section 18, sub-section (1), is in danger of being destroyed, removed, injured or allowed to fall into decay, the Local Government may pass orders for the compulsory purchase of such object at its market-value, and the Collector shall thereupon give notice to the owner of the object to be purchased.

(2) The power of compulsory purchase given by this section shall not extend to—

(*a*) any image or symbol actually used for the purpose of any religious observance; or

(*b*) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors or to any member of his family.

"*Archæological Excavation.*

Power of Governor-General in Council to notify areas as protected.

*20. (1) If the Governor-General in Council, after consulting the Local Government, is of opinion that excavation for archæological purposes in any area should be restricted and regulated in the interests of archæological research, the Governor-General in Council may, by notification in the *Gazette of India* specifying the boundaries of the area, declare it to be a protected area.

(2) From the date of such notification all antiquities buried in the protected area shall be the property of Government and shall be deemed to be in the possession of the Government, and shall remain the property and in the possession of Government until ownership thereof is transferred; but in all other respects the rights of any owner or occupier of land in such area shall not be affected.

Power to enter upon and make excavations in a protected area.

*20A. (1) Any officer of the Archæological Department or any person holding a licence under section 20B may, with the written permission of the Collector, enter upon and make excavations in any protected area.

(2) Where, in the exercise of the power conferred by sub-section (1) the rights of any person are infringed by the occupation or disturbance of the surface of any land, the Government shall pay to that person compensation for the infringement.

Power of Governor-General in Council to make rules regulating archæological excavation in protected areas.

*20B. (1) The Governor-General in Council may make rules—

(*a*) prescribing the authorities by whom licences to excavate for archæological purposes in a protected area may be granted;

(*b*) regulating the conditions on which such licences may be granted, the form of such licences, and the taking of security from licensees;

(*c*) prescribing the manner in which antiquities found by a licensee shall be divided between Government and the licensee; and

(*d*) generally to carry out the purposes of section 20.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) Such rules may be general for all protected areas for the time being, or may be special for any particular protected area or areas.

*Substituted by Act 18 of 1932.

(4) Such rules may provide that any person committing a breach of any rule or of any condition of a licence shall be punishable with fine which may extend to five thousand rupees, and may further provide that where the breach has been by the agent or servant of a licensee the licensee himself shall be punishable.

Power to acquire a protected area.

*20C. If the Governor General in Council is of opinion that a protected area contains an ancient monument or antiquities of national interest and value, he may direct the Local Government to acquire such area, or any part thereof, and the Local Government may thereupon acquire such area or part under the Land Acquisition Act, 1894, † as for a public purpose."

Notes.—"The Ancient Monuments Preservation Act, 1904 (VII of 1904) does not contain any provisions empowering the Government (i) to control excavations by or enlist the aid of archæologists, whether Indian or foreign, outside the Department or universities and learned societies in excavation work or (ii)to regulate the disposal of antiquities found by such outside agencies. The only section of the Act which bears on the control of excavation is section 20, but the scope of this is limited to restricting or regulating operations such as mining, quarrying or blastings, which menace the safety of an ancient monument. Experience of countries, such as Egypt and Mesopotamia, shows that the help of expert outside agencies as well as of learned bodies in India would materially assist in the expansion of archæological exploration in India. The ancient sites both historic and prehistoric, available for excavation in this country are so numerous that it is highly improbable that more than one or two per cent. of them could be explored by official agency in the course of next hundred years, and there is real danger that, for the lack of outside assistance, many of them may be destroyed. But if the aid of outside agencies is to be enlisted, it is necessary that the operations of these agencies should be suitably controlled both as regards the conduct of exploration and excavation and the disposal of the antiquities that may be discovered as a result of them The draft Bill to amend the Act purports to achieve the objects."—*Statement of Objects and Reasons.*

"The Act proposes to fill the space left by the transposition of section 20 as section 10 A by inserting three new sections relating to archæological excavation, that is, excavation for the purpose of disclosing an ancient monument or of unearthing buried antiquities Proposed section 20 gives the Governor-General in Council, after consulting the Local Government power to declare any area to be a protected area, and vests all rights in antiquities found in such area in Government. Any persons removing an antiquity from a protected area will be guilty of theft. Proposed section 20A gives the Governor-General in Council power to make rules to regulate excavation in protected areas and to regulate the division of all antiquities found between Government and the licensee. Proposed section 20B will enable Government to acquire any land in which there have been important archæological discoveries, in order that the area may be properly developed, either by Government's own agencies or by licensees, or by both."—*Notes on Clauses*

Section 20.—"The intention of the prososed section 20 is that when the Governor-General in Council has reason to believe that antiquities exist in any area, he [illegible]

[illegible] A (now 20B) These two [illegible] of the Governor-General [illegible] on for archælogical pur- [illegible]

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* Substituted by Act 18 of 1932

† Act I of 1894.

Purchase of sculptures, carvings or like objects by the Government.

19. (1) If the Local Government apprehends that any object mentioned in a notification issued under section 18, sub-section (1), is in danger of being destroyed, removed, injured or allowed to fall into decay, the Local Government may pass orders for the compulsory purchase of such object at its market-value, and the Collector shall thereupon give notice to the owner of the object to be purchased.

(2) The power of compulsory purchase given by this section shall not extend to—

(a) any image or symbol actually used for the purpose of any religious observance; or

(b) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors or to any member of his family.

Archæological Excavation.

Power of Governor-General in Council to notify areas as protected.

*20. (1) If the Governor-General in Council, after consulting the Local Government, is of opinion that excavation for archæological purposes in any area should be restricted and regulated in the interests of archæological research, the Governor General in Council may, by notification in the *Gazette of India* specifying the boundaries of the area, declare it to be a protected area.

(2) From the date of such notification all antiquities buried in the protected area shall be the property of Government and shall be deemed to be in the possession of the Government, and shall remain the property and in the possession of Government until ownership thereof is transferred; but in all other respects the rights of any owner or occupier of land in such area shall not be affected.

Power to enter upon and make excavations in a protected area.

*20A. (1) Any officer of the Archæological Department or any person holding a licence under section 20B may, with the written permission of the Collector, enter upon and make excavations in any protected area.

(2) Where, in the exercise of the power conferred by sub-section (1) the rights of any person are infringed by the occupation or disturbance of the surface of any land, the Government shall pay to that person compensation for the infringement.

Power of Governor-General in Council to make rules regulating archæological excavation in protected areas.

*20B. (1) The Governor-General in Council may make rules—

(a) prescribing the authorities by whom licences to excavate for archæolo-

be granted, the

s;

a licensee shall

(d) generally to carry out the purposes of section 20.

(2) The power to make rules given by this section is subject to the

being, or

*Substituted by Act 18 of 1932.

(4) Such rules may provide that any person committing a breach of any rule or of any condition of a licence shall be punishable with fine which may extend to five thousand rupees, and may further provide that where the breach has been by the agent or servant of a licensee the licensee himself shall be punishable.

Power to acquire a protected area.

*20C. If the Governor General in Council is of opinion that a protected area contains an ancient monument or antiquities of national interest and value, he may direct the Local Government to acquire such area, or any part thereof, and the Local Government may thereupon acquire such area or part under the Land Acquisition Act, 1894, † as for a public purpose."

Notes.—"The Ancient Monuments Preservation Act, 1904 (VII of 1904) does not contain any provisions empowering the Government (i) to control excavations by or enlist the aid of archæologists, whether Indian or foreign, outside the Department or universities and learned societies in excavation work or (ii) to regulate the disposal of antiquities found by such outside agencies. The only section of the Act which bears on the control of excavation is section 20, but the scope of this is limited to restricting or regulating operations such as mining, quarrying or blastings, which menace the safety of an ancient monument Experience of countries, such as Egypt and Mesopotamia, shows that the help of expert outside agencies as well as of learned bodies in India would materially assist in the expansion of archæological exploration in India. The ancient sites both historic and prehistoric, available for excavation in this country are so numerous that it is highly improbable that more than one or two per cent. of them could be explored by official agency in the course of next hundred years, and there is real danger that, for the lack of outside assistance, many of them may be destroyed. But if the aid of outside agencies is to be enlisted, it is necessary that the operations of these agencies should be suitably [illegible] nduct of exploration and excavation and the [illegible] be discovered as a result of them The draft [illegible] achieve the objects."—*Statement of Objects and* [illegible]

"The Act proposes to fill the space left by the transposition of section 20 as section 10 A by inserting three new sections relating to archæological excavation, that is, excavation for the purpose of disclosing an ancient monument or of unearthing buried antiquities Proposed section 20 gives the Governor-General in Council, after consulting the Local Government power to declare any area to be a protected area, and vests all rights in antiquities found in such area in Government. Any persons removing an antiquity from a protected area will be guilty of theft. Proposed section 20A gives the Governor-General in Council power to make rules to regulate excavation in protected areas and to regulate the division of all antiquities found between Government and the licensee. Proposed section 20B will enable Government to acquire any land in which there have been important archæological discoveries, in order that the area may be properly developed, either by Government's own agencies or by licensees, or by both."—*Notes on Clauses*

Section 20.—"The intention of the prososed section 20 is that when the Governor-General in Council has reason to believe that antiquities exist in any area, he should be empowered to protect them against destruction or removal and to preserve them for the benefit of the nation generally. Accordingly, the section empowers him to declare the area to be protected, and thereupon ownership and possession of all antiquities buried in the area vest in the Government The intention is not, however, to interfere in any other ways with the rights of the owners or occupiers of land in the protected area, such as their rights to sink wells, excavate foundations for buildings, so on We consider that the section does not bring this out sufficiently clearly and we have amended it accordingly. We have made a consequential amendment in clause (a) of sub-section (1) of proposed section 20A (now 20B). These two sections as amended by us, now definitely limit the powers of the Governor-General in Council to the restriction and regulation of excavation for archælogical purposes."—*Report of the Select Committee.*

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* Substituted by Act 18 of 1932 † Act I of 1894.

Form and contents of contract of apprenticeship.

8. Every contract of apprenticeship shall be in writing, according to the *form given in the Schedule A annexed to this* Act, or to the like effect, which shall set forth the conditions agreed upon, particularly specifying the age of the apprentice, the term for which he is bound, and what he is to be taught.

Signatures to contract.

9. Every such contract shall be signed by the person to whom the apprentice is bound, and by the person by whom he is bound and by the apprentice, when he is of the age of fourteen years or more at the time of binding; but, when the apprentice is bound by the governors, directors, or managers of a public charity, the signature of *two of them, or of their secretary or officer, shall be sufficient* on behalf of the persons binding the apprentice

Contract not valid unless executed as prescribed and deposited.

10. No such contract shall be valid unless it be executed in the manner *aforesaid, nor until it has been deposited in the* office of the Chief Magistrate of the place or district where it has been executed,* and the person in whose office any such contract is deposited shall give to each of the parties a copy thereof, certified under his hand, which certified copies shall be received as evidence of the contract, without formal proof *of the handwriting of the Magistrate.**

Copies to be given to parties.

Alteration of terms of service and termination of contract.

11. The terms of service may be changed at any time during the apprenticeship, or the contract may be determined, *with the consent of both parties to the contract* or their personal representatives, and with the consent of the apprentice if he is above the age of fourteen years: provided that the changes agreed to or the termination of the contract shall be expressed in writing on the original contract, with the signature of the proper parties according to section 9† of this Act; and the Magistrate* shall thereupon make under his hand corresponding endorsements *on the office copies, which shall be brought to him at the same time for that* purpose.

Assignment of apprentice to new master.

12. The master of any apprentice bound under this Act may, with the *consent of the person by whom he was bound,* and with the consent of the apprentice if he is above the age of fourteen years, assign such apprentice to any other person, who is willing to take him for the residue of his apprenticeship, and subject to the conditions thereof: Provided that such person shall, by endorsement under his own hand on the contract, declare his acceptance of such apprentice, and acknowledge himself bound by the agreements and covenants therein mentioned to be performed on the part of the master, and that the consent of the other parties aforesaid shall be expressed in writing on the same, and signed by them respectively: And every such assignment shall be certified on the office-copies of the contract under the hand of the Magistrate* according to the form given in Schedule B annexed to this Act.

Powers of Magistrate in case of complaint by apprentice against master.

13. Upon complaint made to any Magistrate in the said territories,‡ by *or on behalf of any apprentice bound under this* Act, of refusal or neglect to provide for him, or to teach him according to the contract of apprenticeship, or of cruelty, or other ill-treatment

* The words after it were omitted by Act XXI of 1929

† The figure 9 has been substituted for the figure 8 by Act XII of 1891, Sch. II.

‡ *See* s. 5.

(4) Such rules may provide that any person committing a breach of any rule or of any condition of a licence shall be punishable with fine which may extend to five thousand rupees, and may further provide that where the breach has been by the agent or servant of a licensee the licensee himself shall be punishable.

Power to acquire a protected area.

*20C. If the Governor General in Council is of opinion that a protected area contains an ancient monument or antiquities of national interest and value, he may direct the Local Government to acquire such area, or any part thereof, and the Local Government may thereupon acquire such area or part under the Land Acquisition Act, 1894, † as for a public purpose."

Notes.—"The Ancient Monuments Preservation Act, 1904 (VII of 1904) does not contain any provisions empow... or enlist the aid of archæologists, or universities and learned societi... of antiquities found by such out... bears on the control of excavation is section 20, but the scope of this is limited to restricting or regulating operations such as mining, quarrying or blastings, which menace the safety of an ancient monument. Experience of countries, such as Egypt and Mesopotamia, shows that the help of expert outside agencies as well as of learned bodies in India would ... exploration in India. The ancie... excavation in this country are ... than one or two per cent. of them ... of next hundred years, and there ... ance, many of them may be destroyed. But if the aid of outside agencies is to be enlisted, it is necessary that the operations of these agencies should be suitably controlled both as regards the conduct of exploration and excavation and the disposal of the antiquities that may be discovered as a result of them The draft Bill to amend the Act purports to achieve the objects."—*Statement of Objects and Reasons.*

"The Act proposes to fill the space left by the transposition of section 20 as section 10 A by inserting three new sections relating to archæological excavation, that is, excavation for the purpose of disclosing an ancient monument or of unearthing buried antiquities Proposed section 20 gives the Governor-General in Council, after consulting the Local Government power to declare any area to be a protected area, and vests all rights in antiquities found in such area in Government. Any persons re-...

... acquire any land in which there have been important archæological discoveries, in order that the area may be properly developed, either by Government's own agencies or by licensees, or by both."—*Notes on Clauses*

Section 20.—"The intention of the prososed section 20 is that when the Governor-General in Council has reason to believe that antiquities exist in any area, he should be empowered to protect them against destruction or removal and to preserve them for the benefit of the nation generally. Accordingly, the section empowers him to declare the area to be protected, and thereupon ownership and possession of all antiquities buried in the area vest in the Government. The intention is not, however, to interfere in any other ways with the ... in the protected area, such as their rights ... buildings, so on We consider that the sectic... clearly and we have amended it accordingly. ... ment in clause (a) of sub-section (1) of propo... sections as amended by us, now definitely limit the powers of the Governor-General in Council to the restriction and regulation of excavation for archæological purposes."—*Report of the Select Committee.*

* Substituted by Act 18 of 1932

† Act I of 1[illegible]

Section 20A.—"The Bill as drafted provided merely for the declaration of a protected area and for the acquisition of the area if after investigation it is found that the area contains an ancient monument or antiquities of national interest and value. It made no provision whereby officers of Government or licensees would have power, to enter upon a protected area in order to make the necessary investigations.
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private land,
that the entry
does not cause unnecessary inconvenience."

gation shall not be allowed to continue far longer than one year, and that after one year the area shall be either abandoned or acquired under the provisions of section 20C."—*Report of the Select Committee*

General.

21. (1) The market-value of any property which the Government is empowered to purchase at such value under this Act, or the *compensation to be paid by Government in respect of anything done under this Act, shall, where any dispute arises "in respect"† of such market-value or compensation, be ascertained in the manner provided by the Land Acquisition Act, 1894,‡ sections 3, 8 to 34, 45 to 47, 51 and 52, so far as they can be made applicable :

Assessment of market-value or compensation

Provided that when making an inquiry under the said Land Acquisition Act, 1894,‡ the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the Collector, and one a person nominated by the owner or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector, in this behalf, by the Collector.

Notes—Section 21 applies to the purchase of movable antiquities or relics and the compensation to be paid. In ascertaining the market-value of such anitiquities and the amount of compensation to be paid to adjacent owners for acts done under the Act, the provisions of Land Acquisition Act enumerated in s 20 are to guide the Court. 42 B. 100=19 Bom. L. R. 937=43 Ind Cas. 480.

Jurisdiction

22. A Magistrate of the third class shall not have jurisdiction to try any person charged with an offence against this Act.

Power to make rules.

23. (1) The Governor-General in Council or the Local Government may make rules for carrying out any of the purposes of this Act.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

Protection to public servants acting under Act.

24. No suit for compensation and no criminal proceeding shall lie against any public servant in respect of any act done, or in good faith intended to be done, in the exercise of any power conferred by this Act.

* Certain words after this repealed by Act 18 of 1932 have been omitted.
† Substituted by Act 18 of 1932.
‡ Act I of 1894.

THE APPRENTICES ACT

ACT NO. XIX OF 1850.*

PASSED ON THE 11TH APRIL, 1850.

Concerning the binding of Apprentices.

Preamble.

FOR better enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts, and employments, by which, when they come to full age, they may gain a livelihood; It is enacted as follows :—

Apprenticing of child, between 10 and 18 years old.

1. Any child, above the age of ten, and under the age of eighteen years, may be bound apprentice by his or her father or guardian to learn any fit trade, craft, or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child shall be of the full age of twenty one years, or, in the case of a female, beyond the time of her marriage.

Evidence of age in *questions as to right to service.*

2. The age set forth in the contracts shall be evidence of the age of the child, in all questions which arise as to the right of the master to the continuance of the service.

Powers of Magistrate or Justice acting for orphans, &c.

3. Any Magistrate or Justice of the Peace may act with all the powers of a guardian under the Act, on behalf of any orphan, or poor child abandoned by its parents or of any child convicted before him, or any other Magistrate, of vagrancy, or the commission of any petty offence.

Apprenticing of child brought up by public charity.

4. Any orphan or poor child, brought up by any public charity, may be bound apprentice by the governors, directors, or managers thereof, as his or her guardians for this purpose

5 [*Apprenticing of such boy in sea-service*].—*Repealed by Act XXI of 1923.*

6. [*Apprenticing of such boy in ship of the East India Company*].—*Repealed by the Repealing Act XIV of 1870.*

7. [*Who to be agent of master of apprentice serving in ship*]—*Repealed by Act XXI of 1923.*

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* Act XIX. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), s. 3.

8. Every contract of apprenticeship shall be in writing, according to the form given in the Schedule A annexed to this Act, or to the like effect, which shall set forth the conditions agreed upon, particularly specifying the age of the apprentice, the term for which he is bound, and what he is to be taught.

Form and contents of contract of apprenticeship.

9. Every such contract shall be signed by the person to whom the apprentice is bound, and by the person by whom he is bound and by the apprentice, when he is of the age of fourteen years or more at the time of binding; but, when the apprentice is bound by the governors, directors, or managers of a public charity, the signature of two of them, or of their secretary or officer, shall be sufficient on behalf of the persons binding the apprentice.

Signatures to contract.

10. No such contract shall be valid unless it be executed in the manner aforesaid, nor until it has been deposited in the office of the Chief Magistrate of the place or district where it has been executed,* and the person in whose office any such contract is deposited shall give to each of the parties a copy thereof, certified under his hand, which certified copies shall be received as evidence of the contract, without formal proof of the handwriting of the Magistrate.*

Contract not valid unless executed as prescribed and deposited.

Copies to be given to parties.

11. The terms of service may be changed at any time during the apprenticeship, or the contract may be determined, with the consent of both parties to the contract or their personal representatives, and with the consent of the apprentice if he is above the age of fourteen years: provided that the changes agreed to or the termination of the contract shall be expressed in writing on the original contract, with the signature of the proper parties according to section 9† of this Act; and the Magistrate* shall thereupon make under his hand corresponding endorsements on the office copies, which shall be brought to him at the same time for that purpose.

Alteration of terms of service and termination of contract.

12. The master of any apprentice bound under this Act may, with the consent of the person by whom he was bound, and with the consent of the apprentice if he is above the age of fourteen years, assign such apprentice to any other person, who is willing to take him for the residue of his apprenticeship, and subject to the conditions thereof: Provided that such person shall, by endorsement under his own hand on the contract, declare his acceptance of such apprentice, and acknowledge himself bound by the agreements and covenants therein mentioned to be performed on the part of the master, and that the consent of the other parties aforesaid shall be expressed in writing on the same, and signed by them respectively: And every such assignment shall be certified on the office-copies of the contract under the hand of the Magistrate* according to the form given in Schedule B annexed to this Act.

Assignment of apprentice to new master.

13. Upon complaint made to any Magistrate in the said territories,‡ by or on behalf of any apprentice bound under this Act, of refusal or neglect to provide for him, or to teach him according to the contract of apprenticeship, or of cruelty, or other ill-treatment

Powers of Magistrate in case of complaint by apprentice against master.

* The words after it were omitted by Act XXI of 1929.

† The figure 9 has been substituted for the figure 8 by Act XII of 1891, Sch. II.

‡ *See* s. 5.

by his master, or by the agent under whom he shall have been placed by his master, the Magistrate may summon the master or his agent, as the case may be, if he shall be within his jurisdiction, to appear before him at a reasonable time, to be stated in the summons, to answer the complaint ;

and at such time, whether the master or his agent be present or not (service of the summons being proved), may examine into the matter of the complaint ; and, upon proof, thereof may cancel the contract of apprenticeship, and assess upon the offender, whether he shall be the master or his agent, a reasonable sum for behoof of the apprentice not exceeding four times the amount of the premium paid upon the binding, or if no premium, or a less premium than fifty rupees was paid, not exceeding two hundred rupees ;

and, if the offender shall not pay the sum so assessed, may levy the same by distress and sale of his goods and chattels, and, if the offender shall not be the master but his agent, by distress and sale of the goods and chattels of the master also.

Powers of master or his agent to chastise apprentice.

14. No contract of apprenticeship shall be cancelled, nor shall any master or his agent be liable to any criminal proceeding, on account of such moderate chastisement for misbehaviour given to any apprentice by his master or the agent of his master, as may lawfully be given by a father to his child ; and the provision for enabling the contract of apprenticeship to be cancelled shall not bar any criminal proceeding against any master or his agent for an assault or other offence committed against his apprentice, for which he would be liable to be punished had it been against his child, whether or not any proceedings be taken for cancelling the contract of apprenticeship.

Liability of master or agent for assault, &c.

Power of Magistrate in case of complaint by master against apprentice

15. Upon complaint made to any Magistrate, by or on behalf of the master of any apprentice bound to him under this Act, of any ill-behaviour of such apprentice, or if such apprentice shall have absconded, the Magistrate may issue his warrant for apprehending such apprentice, and may hear and determine the complaint, and punish the offender by an order for keeping the offender, if a boy, in confinement in any debtor's prison or other suitable place, not being a criminal gaol, for any time not exceeding one month, of which one week may be in solitary confinement, during which time such allowance shall be made for his subsistence by the master or his agent as the Magistrate shall order ; and, if the offender be a boy of not more than fourteen years of age, may order him to be privately whipped : or, if the offender be a girl, or in the case of any boy, the Magistrate deem any such punishment unfit, he may pass an order empowering the master of the apprentice or his agent to keep the offender in close confinement in his own house or on board the vessel to which he belongs, upon bread and water or such other plain food as may be given without injury to the health of the apprentice, for a period not exceeding one month.

Cancelment of contract for misconduct of apprentice.

16. Upon complaint of wilful and repeated ill-behaviour on the part of the apprentice, and on the demand of the master, the Magistrate may order the contract of apprenticeship to be cancelled, whether or not the charge is proved ; but only with the consent of the apprentice and of his father or guardian, if the charge is not proved ; and such cancelling shall be with or without refund of the whole or part of any premium that may have been paid to the master on binding such apprentice, as to the Magistrate seems fit on consideration of the case ; and all sums so refunded shall be applied under the direction of the Magistrate for behoof of the apprentice.

Appropriation of sum recovered for apprentice on cancelment of contract.

17. The Magistrate may order any sum recovered for behoof of the apprentice on cancelling the contract to be either laid out in binding him to another master, or otherwise for his benefit, or to be paid to the person by whom any premium was paid when he was bound apprentice.

Limitation of complaint of master against apprentice;

18. No Magistrate shall entertain a complaint on the part of a master against an apprentice under this Act, unless it be brought within one month after the cause of complaint arose, or, if the cause of complaint arose on board-ship during a voyage, within one month after the arrival thereof at a port or place in the said territories; and no Magistrate shall entertain a complaint on the part of an apprentice against his master or the agent of his master under this Act, unless it be brought within three months after the cause of complaint arose, or, if the cause of complaint arose on board-ship during a voyage, within three months after the arrival thereof at a port or place in the said territories.

of apprentice against master.

Effect of death of master during apprenticeship.

19. If the master of any apprentice shall die before the end of the apprenticeship, the contract of apprenticeship shall be thereby determined; and a proportionate part, corresponding to the unexpired portion of the term of any premium, which shall have been paid to such master on the binding of the apprentice to him, shall be returned by the executors or administrators out of the estate of the deceased to the person or persons who shall have paid the same; unless the executors or administrators of the deceased master shall continue the business in which such apprentice shall have been employed, and shall, within three months from the death of the late master, make offer in writing to keep the apprentice on the terms of the original contract; in which case the estate of the deceased shall be discharged from all liabilities on account of such premium.

Offer by representative of master to continue apprentice.

Offer to be certified on original contract and copies.

20. If such offer to keep the apprentice shall be made as aforesaid, the same shall be fully expressed and certified by the executors "or*" administrators on the original contract of apprenticeship, and also on the office-copies thereof, by the Magistrate; † and the apprentice shall be bound to the executors or administrators so keeping him for the remaining term of his apprenticeship.

Maintenance of apprentice whose master dies.

Apprentice to continue to serve.

21. Any apprentice bound under this Act, whose master shall die during the apprenticeship, shall be entitled to maintenance for three months from and after the death of his master, out of the assets left by him: provided that during such three months such apprentice shall continue to live with, and serve as an apprentice, the executors or administrators of such master, or such person as they appoint.

Effect of insolvency of master during apprenticeship.

22. The apprentice of any person against whom a commission of bankruptcy shall be issued, or who shall be adjudged to have committed an act of insolven[illegible] g the [illegible] obli- [illegible], and

* The word "or" has been substituted for the word "and" by Act XII of 1891, Sch. II.

† The words "or Registering officer" were omitted by Act XXI of 1923.

if any premium was paid on binding him as an apprentice, he or a person by whom he was bound shall be entitled to claim the amount thereof as a debt against the estate of the bankrupt or insolvent *

Persons amenable to jurisdiction of Magistrates' Courts.

23. For the purposes of this Act all British subjects, wherever or of whatever parents born, as well as other persons in the territories under the Government † of India, without the towns of Calcutta and Madras and the town and † Island of Bombay, shall be amenable to the jurisdiction of the Courts and Magistrates of India.

Appeal from orders of Mofussil Magistrates.

24. An appeal shall lie from any order passed by any Magistrate without the said towns and island to the Court of Session to which such Magistrate is subordinate, provided the appeal is made within one month from the date of the order.

Interpretation of terms.

25 In this Act the words "master," "owner," "person," and the pronoun "he" shall be understood to include several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless there is something in the context repugnant to such construction.

SCHEDULE A.

Form of Agreement.

This Agreement made the day of in the year between *A. B*, of , and *C D*, of , witnesseth that the said *A B.* doth this day bind *E F.* a boy (or girl) of the age of years completed, son (or daughter) of the said *A. B.* (or otherwise describing the relation in which *A B* and *E. F.* stand), to dwell with and serve the said *C D*, as an apprentice, from this day forth for years (in the case of a girl add, or until the time of her marriage, which shall first happen), during [illegible]

[illegible] in consideration [illegible] the said *C. D.*, the [illegible] by acknowledges,

If there is no premium, the word between brakets may be omitted

and] of the faithful service of the said *E. F.*, doth covenant and agree with the said *A B*, his (of her) executors and administrators, that he (or she) will teach or cause to be taught to the said *E. F*, in the best way and manner that he (or she) can, the trade (craft or employment) of a during the said term; and will also, during the said term, find and allow unto the said apprentice good, wholesome and sufficient food, clothes, lodging, washing, and all other things necessary, fit, and reasonable for an apprentice: (and further, *here insert any special covenants*).

In witness whereof the parties have hereunto set their hands and seals the day and year above written

A B. [L. S.]

C. D [L. S.]

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* *Cf.* the Bankrupt Law Consolidation Act, 1849, 12 & 13 Vict. c. 106, s. 170.

† The word "East" before the word "India" and the word "Company" after the word "India" were repealed by the Repealing Act, 1874 (16 of 1874).

SCHEDULE B.

FORM OF ORDER OF ASSIGNMENT.

(To be endorsed on the Agreement.)

Be it known to all men that on the day of in the year , C. D., of with , and desired that the agreement bound to the said C. D. might be and the said G H, having satisfied himself, by personal examination, of the said E. F., and by other lawful ways and means, that such assignment is for the benefit of the said E. F, and is made with the consent of [the said E. F., and of] all persons whose consent thereunto by law is required the contract of E. F was on the day of in the yea as an apprentice to learn the trade (craft or employment) of a , shall hence-

If E. F. is not above the age of fourteen years, the words between brakets may be omitted.

C. D. *E. F.* *J. K.*

In witness whereof the said *C. D*, *E. F.*, and *J. K.* have hereunto set their hands before me the day and year above written.

G. H., Magistrate.

THE INDIAN ARBITRATION ACT, 1899.

ACT NO. IX OF 1899.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the G. G's. Assent on the 3rd March, 1899.

An Act to amend the Law relating to Arbitration

WHEREAS it is expedient to amend the law relating to arbitration by agreement without the intervention of a Court of Justice; It is hereby enacted as follows :—

Notes — pute accordin usually so f C. W. N. 485 ...

Short title, extent and commencement.

1. (1) This Act may be called the Indian Arbitration Act, 1899.

(2) It extends to the whole of British India; and

(3) It shall come into force on the first day of July, 1899.

Notes—The Indian Arbitration Act, 1899 is based on the English Arbitration Act, 1889 (52 & 53 Vict. Cap. 49). Many sections are taken *verbatim* from that Act. As regards the application of the Act, *vide* s. 2. Before the passing of the Arbitration Act a contract to refer matters to arbitration was governed by the Indian Contract Act, the Civil Procedure Code and the Specific Relief Act, (I of 1877). So far as the provisions contained in the Indian Contract Act and the Specific Relief Act are concerned, no contract to refer (present or future differences) to arbitration could be specifically enforced. But the party who refuses to perform is debarred from bringing a suit on the same subject. The Civil Procedure Code of

1882, required that the arbitrators should be named. This Act is an independent Act. 76 Ind. Cas. 525 ; 50 Ind. Cas. 411. The strict rule of evidence need not be observed in an arbitration proceeding. 49 Ind. Cas. 135. The parties may by common consent increase the number of arbitrators. 62 Ind. Cas. 426=43 A. 456. The Arbitration Act is an Act to amend the law relating to arbitration. It does not deal with the whole law of arbitration and it must be construed strictly in that it confers special powers of interference not otherwise inherent in the Court. *Gopalji* v. *Morarji*, 50 Ind Cas. 411=21 Bom. L. R. 308=43 B 809 This Act deals with arbitration initiated by agreement between parties not in litigation. This Act applies even when parties to suit engage in arbitration without an order of the court. A. I. R. 1931 Rang. 58=131 Ind. Cas. 57. Motion is not available under the Act for administration of an estate, the remedy is administration suit or originating summons. 102 Ind Cas 108=45 C L. J 597=31 C. W. N 517. Award upheld by court becomes enforceable as a decree *Ibid.* The Act does not apply to arbitration in the course of litigation. 49 C 608=69 Ind Cas. 808 When the Act is not applicable reference under the Act is not legal. 132 Ind. Cas 399=32 P. L R. 444= A. I. R. 1931 Lah 555 Courts in Ferozepore can not proceed with reference under the Act. *Ibid* This Act has been made applicable to Lahore but it is subject to the provision of the Punjab Arbitration Amendment Act of 1911 A. I. R. 1934 Lah. 652=35 P. L. R 482=152 Ind. Cas. 135.

Application.

2. Subject to the provisions of section 23, this Act shall apply only in cases where, if the subject-matter submitted to arbitration were the subject of a suit, the suit could, whether with leave or otherwise, be instituted in a Presidency-town :

Provided that the Local Government,* may, by notification in the local official Gazette, declare this Act applicable in any other local area as if it were a Presidency-town.

Notes—In the first instance this Act applies only to cases where, the subject-matter submitted to arbitration were the subject of a suit, which could be instituted in a presidency-town. 15 Ind Cas 402 ; 27 Ind. Cas. 129 ; 7 Ind. Cas 593 ; 7 Ind. Cas. 588 ; see also 35 P L. R. 482=A. I. R 1934 Lah 652 ; A. I. R. 1534 Sind 183. This act has been declared in force in the town of Karachi. *Vide Bom. Govt. Gaz.* 1899, Pt. 1, p. 1127. Although suit in respect of portion is outside ordinary jurisdiction of High Court reference to arbitration with regard to such property can be made under this section 127 Ind. Cas. 60=34 C. W N. 268=A. I. R. 1930 Cal. 468 Where parties are living in a presidency-town, and one of the properties also is situate in that town, award relating to such property can be filed in presidency-town. 114 Ind. Cas. 818 ; see also A I. R. 1934 Bom 79 This section does not affect arbitration under the Companies Act, s 152 (3). A I. R. 1933 Lah. 44=14 Lah. 249 ; A I. R. 1933 Pat. 43=13 P. L. T. 169=136 Ind Cas. 447 Where submission is made at Karachi, court at Amritsar has jurisdiction to act under the Act 130 Ind Cas. 769=A. I. R. 1931 Lah. 66.

Exclusion of certain enactments in certain cases where Act applies.

3. The last thirty-seven words of section 21 of the Specific Relief Act, 1877†, and sections 523 to 526 of the Code of Civil Procedure‡ shall not apply to any submission or arbitration to which the provisions of the Act for the time being apply :

Provided that nothing in this Act shall affect any arbitration pending in a Presidency town at the commencement of this Act or in any local area at the date of the application thereto of this Act, as aforesaid, but shall apply to every arbitration commenced after the commencement of this Act or the date of the application thereof, as the case may be, under any agreement or order previously made.§

Notes—Section 22 of Schedule II of the Civil Procedure Code contains a similar provision. *Vide Abdulla* v. *Sofiulla*, 69 Ind. Cas. 204.

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* Certain words after this repealed by Act 38 of 1920 have been omitted.
† Act 1 of 1877.
‡ Act XIV of 1882, see now Act V of 1908.
§ Certain words after this repealed by Act VII of 1913 have been omitted.

SCHEDULE B.

FORM OF ORDER OF ASSIGNMENT.

(To be endorsed on the Agreement)

day of in the year , C. D., of with , and desired that the agreement bound to the said C. D. might be and the said G H., having satisfied himself, by personal examination, of the said *E. F.*, and by other lawful ways and means, that such assignment is for the benefit of the said *E. F*, and is made with the consent of [the said *E F.*, and of] all persons whose consent thereunto by law is required, doth allow such assignment; and the contract of apprenticeship whereby the said *E. F* was on the day of in the year bound to the said *C. D.* as an apprentice to learn the trade (craft or employment) of a , shall henceforth endure, unto the end of the said term, as if the said *J. K.* had been originally the said r adminis- said *E. F.*) was by

If E F. is not above the age of fourteen years, the words between brakets may be omitted.

C. D. *E. F.* *J. K.*

In witness whereof the said *C. D*, *E. F*, and *J. K.* have hereunto set their hands before me the day and year above written

G. H., Magistrate.

THE INDIAN ARBITRATION ACT, 1899.

ACT NO IX OF 1899.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

Received the G G's. Assent on the 3rd March, 1899.

An Act to amend the Law relating to Arbitration.

WHEREAS it is expedient to amend the law relating to arbitration by agreement without the intervention of a Court of Justice; It is hereby enacted as follows :—

Notes.—It is an implied term of the contract that the arbitrator must decide dispute according to the contract, and that every defence open in a court of law can be usually so for the arbitrator's decision. 115 Ind. Cas. 713=56 C 1018 P. C.=33 C W. N. 485 P. C.

Short title, extent and commencement.

1. (1) This Act may be called the Indian Arbitration Act, 1899.

(2) It extends to the whole of British India; and

(3) It shall come into force on the first day of July, 1899.

Notes.—The Indian Arbitration Act, 1899 is based on the English Arbitration Act, 1889 (52 & 53 Vict. Cap 49). Many sections are taken *verbatim* from that Act. As regards the application of the Act, *vide* s. 2. Before the passing of the Arbitration Act a contract to refer matters to arbitration was governed by the Indian Contract Act, the Civil Procedure Code and the Specific Relief Act, (I of 1877). So far as the provisions contained in the Indian Contract Act and the Specific Relief Act are concerned, no contract to refer (present or future differences) to arbitration could be specifically enforced. But the party who refuses to perform is debarred from bringing a suit on the same subject. The Civil Procedure Code of

1882, required that the arbitrators should be named. This Act is an independent Act. 76 Ind. Cas. 525 ; 50 Ind. Cas. 411. The strict rule of evidence need not be observed in an arbitration proceeding. 49 Ind. Cas. 135. The parties may by common consent increase the number of arbitrators. 62 Ind. Cas. 426=43 A. 456. The Arbitration Act is an Act to amend the law relating to arbitration. It does not deal with the whole law of arbitration and it must be construed strictly in that it confers special powers of interference not otherwise inherent in the Court. *Gopalji* v. *Morarji*, 50 Ind. Cas. 411=21 Bom L. R. 308=43 B. 803 This Act deals with arbitration initiated by agreement between parties not in litigation. This Act applies even when parties to suit engage in arbitration without an order of the court. A. I. R. 1931 Rang 58=131 Ind. Cas. 57. Motion is not available under the Act for administration of an estate, the remedy is administration suit or originating summons. 102 Ind. Cas 108=45 C. L. J. 597=31 C. W. N. 517. Award upheld by court becomes enforceable as a decree *Ibid.* The Act does not apply to arbitration in the course of litigation. 49 C 608=69 Ind Cas 808. When the Act is not applicable reference under the Act is not legal. 132 Ind Cas. 399=32 P. L R. 444= A I R. 1931 Lah 555 Courts in Ferozepore can not proceed with reference under the Act. *Ibid* This Act has been made applicable to Lahore but it is subject to the provision of the Punjab Arbitration Amendment Act of 1911 A. I. R. 1934 Lah 652=35 P. L. R 482=152 Ind. Cas. 135.

Application.

2. Subject to the provisions of section 23, this Act shall apply only in cases where, if the subject-matter submitted to arbitration were the subject of a suit, the suit could, whether with leave or otherwise, be instituted in a Presidency-town :

Provided that the Local Government,* may, by notification in the local official Gazette, declare this Act applicable in any other local area as if it were a Presidency-town.

Notes —In the first instance this Act applies only to cases where, the subject-matter submitted to arbitration were the subject of a suit, which could be instituted in a presidency-town. 15 Ind Cas 402 ; 27 Ind. Cas 129 ; 7 Ind. Cas. 593 ; 7 Ind. Cas. 588 ; see also 35 P L R. 482=A I. R 1934 Lah. 652 ; A. I. R. 1534 Sind 183. This act has been declared in force in the town of Karachi. *Vide Bom. Govt. Gaz.* 1899, Pt. 1, p 1127. Although suit in respect of portion is outside ordinary jurisdiction of High Court reference to arbitration with regard to such property can be made under this section 127 Ind. Cas 60=34 C. W N. 268=A. I. R. 1930 Cal. 468. Where parties are living in a presidency-town, and one of the properties also is situate in that town, award relating to such property can be filed in presidency-town. 114 Ind. Cas. 818 ; see also A I. R. 1934 Bom 79 This section does not affect arbitration under the Companies Act, s 152 (3) A. I. R. 1933 Lah. 44=14 Lah. 249 ; A. I. R. 1933 Pat. 43=13 P. L. T. 169=136 Ind Cas. 447. Where submission is made at Karachi, court at Amritsar has juridiction to act under the Act. 130 Ind. Cas. 769=A. I. R. 1931 Lah. 66.

Exclusion of certain enactments in certain cases where Act applies.

3. The last thirty-seven words of section 21 of the Specific Relief Act, 1877†, and sections 523 to 526 of the Code of Civil Procedure‡ shall not apply to any submission or arbitration to which the provisions of the Act for the time being apply :

Provided that [illegible] y arbitration pending in a [illegible] in any local area at the [illegible] id, but shall apply to every arbitration commenced after the commencement of this Act or the date of the application thereof, as the case may be, under any agreement or order previously made §

Notes —Section 22 of Schedule II of the Civil Procedure Code contains a similar provision. *Vide Abdulla* v. *Sofiulla*, 69 Ind. Cas 204

* Certain words after this repealed by Act 38 of 1920 have been omitted.
† Act 1 of 1877.
‡ Act XIV of 1882, see now Act V of 1908.
§ Certain words after this repealed by Act VII of 1913 have been omitted.

Where agreement to refer to arbitration made with company, Court has no jurisdiction to file it under Sch. II, para. 17 A. I. R. 1929 Lah. 246=118 Ind. Cas. 533. As regards agreement to refer to arbitration under s 157 of the Companies Act, *vide* 136 Ind. Cas. 445=13 Pat. L. T. 169=I. R. 1932, Pat. 109.

Definitions.

4. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "the Court" means, in the Presidency-towns, the High Court, and, elsewhere, the Court of the District Judge; and

(*b*) "submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not: *

Clause (*a*).—"Elsewhere" in this clause means in all other places than the presidency towns. 52 Ind. Cas. 139=13 S. L. R. 23 An award under this Act can only be enforced by the District Judge and can not be transferred by him to any other except that of a District Judge A. I. R. 1934 Pesh. 107.

Clause (*b*)—Written agreement means one in which the terms on both sides are reduced into writing *Caerleon Tinplate Co* v. *Hughes*, 60 L. J. Q. B. 640; but see 19 Ind Cas 625 This section does not require in all cases that the written agreement must be signed by both parties *Baker* v. *Yorkshire Insurance Co* (1892), 1 Q. B. 147, see also 19 Ind Cas. 925, 49 Ind. Cas. 135; but see 53 C. 65=95 Ind. Cas. 21; 61 C. 702=38 C. W. N. 737=A I R. 1934 Cal. 796. The intention of the [illegible] submis- [illegible] m. 476; [illegible] proceed on the assumptions that it is in writing. 36 B. 369=36 Bom L. R. 47=A. I. R 1934 Bom. 79. The term "submission" is construed very broadly. 36 Bom. L. R. 1005=A I. R. 1934 Bom 476 An agreement may be collected from a series of documents, even though connected by parol evidence, and the signature of any document forming part of the agreement is sufficient to bind the party signing to the submission contained in the agreement *Sukhamal* v *Babu Lal*, 59 Ind. Cas. 75=18 A L. J. 652 An article of association of a private company which makes provision for arbitration may be considered as a submission in writing. *Hickman* v. *Kent*, (1915) 1 Ch 881; see also *Aitken* v *Batchelor*, 62 L. J. B. 193 Such an agreement may be deduced from the correspondence of the parties. *Morgan* v. *William Harrison*, (1907) 97 L. T. 444; see also *Jewott* v. *Neath*, (1916) J. P 207; *Clements* v *County of Devon Insurance Committee*, (1918) 1 K B 04; 33 C 1237; 4 S. L. R. 14; 6 S L R 278; 10 C. W. N. 814; 61 Ind. Cas. 169, 80 Ind. Cas 513; 76 Ind. Cas 917. A reference can be made where there is a dispute. *Chandmull* v. *Nippon*, 64 Ind Cas 798; see also 72 Ind. Cas. 1016; 54 Ind Cas 285=46 C. 534; 47 C. 799; 46 C. 534; (1899) A C. P. 81; (1915) 2 K. B. 35 at p. 40; 33 T. L. R. 395. Acceptance of the written agreement might be in the form of a signed document by both parties containing all the terms, or a signed document by one party containing the terms and a plain acceptance either signed or orally accepted by the other party, or, in the third case, an unsigned document, containing the terms of the [illegible] orally by both parties. A. I. R. 1931 All. [illegible] to do business on certain terms, one of [illegible] those terms by conduct amounts to submis[illegible] Bom. 81=32 Bom. L. R. 1451; see also 118 Ind. Cas. 220=1929 Sind 83; 56 C. 118 =32 C. W. N. 110=117 Ind. Cas. 540; 90 Ind. Cas 932; 16 Ind. Cas 660; 89 Ind. Cas. 866; 61 Ind. Cas. 380; 118 Ind. Cas. 220. Submission includes arbitration clause as well as reference. 95 Ind. Cas. 526. Where claim is time-barred, there is no subsisting clause to be referred. 95 Ind. Cas. 540=19 S. L R. 24=A. I. R. 1926 Sind 209 Where the factum of contract or its existence is denied there is no jurisdiction of the arbitrators. 138 Ind. Cas 337=34 Bom. L. R. 697=A. I. R. 1932 Bom. 341. An oral submission is not invalid. A. I. R. 1932 Mad. 745.

Present and future difference—*Vide* 62 L. T. 808; 18 Q. B. D. 7 C. A.; (1915) 2 K. B. 35; (1915) 32 T. L. R. 183.

Submission to be irrevocable except by leave of Court.

5. A submission, unless a different intention is expressed therein, shall be irrevocable, except by leave of the Court.

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* Supplemented in U. P. *vide* U. P. Act I of 1912

Scope—The word "a submission shall be irrevocable" is ambiguous; it is applicable, not to the agreement to refer, but to the authority of the arbitrator. *Per Bowen L. J.* in *In re Smith and Service* (1890) 25 Q. B. D. at p. 547. This section relates merely to the right to revoke a submission *Doleman v. Ossel Corporation*, (1912) 3 ... 44 Ind. Cas. 360; 2c ... such leave. *James v.* ... great caution. *Belcher* ... 1; 111 Ind. Cas. 700.

Grounds for revocation—T... *lity or bias* (1894) 10 T. L. R 393. ... (1900) W N. 153; (1901) 85 L T. ... 44 Ind. Cas. 360; (3) *Misconduct* c...

6. A submission, unless a different intention is expressed therein, shall be deemed to include the provisions set forth in the first schedule, in so far as they are applicable to the reference under submission.

Provisions implied in submissions.

Notes—In matters of interpretation the Court is to be guided by the intention of the parties; and by what law an arbitration contract is to be interpreted is to be determined by the intention of the parties. *Hamlyn v. Talisker*, (1894) 71 L. T at p. 2; see also *Spurrier v. La Clocha*, (1902) A C 446; *Pena v. Rio*, (1911) 105 L. T. 846

Reference to arbitrator to be appointed by third person.

7. The parties to a submission may agree that the reference shall be to an arbitrator or arbitrators to be appointed by a person designated therein.

Such person may be designated either by name or as the holder for the time being of any office or appointment.

Illustration.

The parties to a submission may agree that any dispute arising between them in respect of the subject-matter of the submission shall be referred to an arbitrator to be appointed by the Bengal Chamber of Commerce, or, as the case may be, to an arbitrator to be appointed by the President for the time being of the Bengal Chamber of Commerce.

Notes—This section has been expressly enacted to empower Bengal Chamber of Commerce to appoint arbitrators ... annot ... insur- ... than ... nd for ... d 8.

Power for the Court in certain cases to appoint an arbitrator, umpire or third arbitrator.

8. (1) In any of the following cases—

(*a*) where a submission provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;

(*b*) if an appointed arbitrator neglects or refuses to act, or is incapable of acting, or dies, or is removed, and the submission does not show that it was intended that the vacancy should not be supplied, and ...

(*c*) ... to appoint an umpire

(*d*) ... refuses to act, or is incapable of acting, or dies, or is removed, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in appointing an arbitrator, umpire or third arbitrator.

(2) If the appointment is not made within seven clear days after the service of the notice, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator, umpire or third arbitrator, who shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

Scope.—The true meaning of clauses (a) and (b) is that, where the parties will ... refuses to act, or is incapable ... omission whereby an appoint- ... an arbitrator. *Wilson and* ... 81. Clause (1) (b) does not ... itrators. 83 Ind. Cas. 539=17 ... would ordinarily be filled by the original appointer as contemplated by section 9. Section 8 (1) (b) only applies in terms to a single vacancy to be supplied by the parties. The section no where ... *plus* ... r the ... intly. ... *opalji* ... *Smith* ... was a mutual agreement to refer to two arbitrators one of whom refused to act. *Held*, S 8 (1) (b) applies as the expression "an appointed arbitrator" can mean one of two appointed arbitrators. A. I. R. 1929 Cal. 177=56 Cal. 848=33 C. W. N. 418. Where a sole arbitrator is appointed by one party under s. 9, the other party having refused ... the procedure to be followed is ... nly when appointment is subject to ... 26. Court has no power to appoint ... proceed in a case submitted to them, ... two. 21 Bom. L. R. 308=50 Ind. Cas. 411.

Clause (a).—Where reference is to be made to an "arbitrator or umpire" it means a reference to a single arbitrator. (1892) 1 Q. B. at p. 141 A. C.

Clause (b).—An arbitrator who hesitates to act without the order of the Judge can not be said to refuse to act. (1892) 1 Q. B. D. 81. Person named in contract refusing to arbitrate is no ground for refusing to enforce arbitration. 140 Ind. Cas. 626=A. I. R. 1933 Sind 75. Reference does not become infructuous on death of parties to reference. A. I. R. 1933 Sind 115=114 Ind. Cas. 42=A. I. R. 1933 Sind 167.

Clause (c).—Where an umpire has been appointed, the award must be made by all of them (1896) 1 Q B. 567 and (1914) A. C. 651 P. C. Where the arbitrators have failed to comply with a notice requiring them to appoint an umpire, the Court has power to bring the arbitrators before it for the purpose of ascertaining their views before making the appointment. *Taylor v. Denny*, (1912) A. C. 666 cited in the *Yearly Practice of the Supreme Court*, 1921.

Clause (d)—*Vide* 63 L. J. Q. B. 171.

Written notice to appoint.—The words "to appoint" mean to concur in the appointment. (1891) 1 Q. B. 141.

Court may appoint.—When all the requirements of the section are fulfilled, the Court must appoint. *In re Eyre* (1891) 1 Q. B. 141; see also A. I. R. 1935

Oudh 26. The Court can not ask the party to appoint. *In re Smith*, 25 Q. B. D. 545 ; see also 76 Ind. Cas. 261.

Sub-section (2).—*Vide* 71 Ind. Cas. 817=A. I. R. 1924 Lah. 435.

Power for parties in certain cases to supply vacancy.

9. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed therein,—

(*a*) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, or is removed, the party who appointed him may appoint a new arbitrator in his place ;

(*b*) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with a written notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent :

Provided that the Court may set aside any appointment made in pursuance of clause (b) of this section.

[illegible] here the reference is to three arbitra- [illegible] 5, see also 14 Eq. 555 This section [illegible] intention is not expressed in the [illegible] So also clause (b) has no application to a case where the parties by their contract have provided that a different course should be adopted in the event of one of the parties failing to nominate one arbitrator, 44 M. 406=62 Ind. Cas. 205. This section has no application also where the agreement stipulates that in case of non-appointment by any of the parties the Chairman of the Trade Union was to appoint one on behalf of the defaulting party. *Sasoon* v. *Ranidutt*, 49 I. A. 366=27 C. W. N. 660=70 Ind. Cas. 777. The appointment was validly made under clause (b) in *Jessop* v. *Huddersfield Society*, 80 L. T. 598 ; *S. S. Den of Airlie Co.* v. *Mitsui & Co Ltd.* (1912) 106 L. T. 451. But where one of the parties died the other party cannot apply to the Court to have an arbitrator appointed on the refusal of the executors of the deceased to appoint an arbitrator. *In re Percival and Ors*, (1885) 2 T. L. R 150. The arbitrators duly [illegible] v. *Gurdayal*, 76 Ind Cas 660. [illegible] notifies to the other side. *Jew* [illegible] Q. B. 775. The Court will not [illegible] the arbitration will be merely *futile and productive of no injury to the party complaining. Farror* v *Cooper*, 59 L. J. Ch. 506=49 Ch. D. 323. One party may refuse to appoint an arbitrator, until he is informed by the other party of the nature of the dispute. *Ibid.* See also *May* v. *Mills*, 30 T. L. R. 287. It is not proper to import s. 9 into the contract entered into by the parties themselves to refer disputes to arbitration, A. I. R. 1930 All. 581=126 Ind. Cas. 10=1930 A. L. [illegible] to two arbitrators, one by each party [illegible] appointment and therefore, the other [illegible] *Held*, the award must be set aside. E [illegible] Ind. Cas. 290 (P. C). When the su[illegible] arbitrator appointed by one of the parties is duly declared to be the sole arbitrator and, he thereafter, refuses to act then vacancy has to be supplied in accordance with s 9, A. I. R. 1927 Sind. 177=100 Ind Cas 890 ; A. I. R. 1929 Sind 55=107 Ind. Cas. 435. Party desiring to enforce submission clause must specify nature of dispute and nominate his arbitrator first. A. I. R 1929 Sind. 58=109 Ind. Cas. 58. Official Receiver or trustee in bankruptcy is not party within s. 9, nor can he be compelled to be a party where the bankrupt's estate is debtor and not creditor. A. I. R. 1926 Sind. 209=19 S. L. R. 24=95 Ind. Cas 750. When reference to two arbitrators one by each party is made each party has right to appoint another in place of an arbitrator refusing to act. One party refusing to appoint the other can appoint sole arbitrator. 88 Ind. Cas. 90=A. I. R. 1925 Bom. 469=49 B. 706=27 Bom. L. R. 568. Arbitrator not attending on date fixed will under certain circumstances be construed as refusal to act as arbitrator and on such refusal followed by

non-appointment of another man one arbitrator would suffice. A. I. R. 1930 All. 675=1930 A L J. 1373=131 Ind. Cas 552. Defect of absence of notice under s. 9(b) can be waived by failure to object in time. A. I. R. 1920 P. C. 123=62 Ind. Cas. 737. Party acquiescing in such addition is estopped from objecting on this ground. A. I. R. 1921 All. 64=43 A 456=19 A. L. J. 348=62 Ind. Cas. 426. If suit is filed despite reference, specific performance cannot be enforced but only stay of suit can be asked for. A. I R 1921 Cal. 244=25 C W. N. 62=61 Ind. Cas. 380. Election of sellers to have private arbitration puts an end to buyer's remedy to arbitrate through public tribunal. A. I. R. 1924 Cal. 828=51 C 657=12 Ind. Cas. 769 Section 9 does not provide for case where one party is entitled to appoint two arbitrators. 142 Ind. Cas. 706=A. I. R, 1933 Sind. 6. Where there is a provision only to appoint two arbitrators, one by each party, and one party was allowed to nominate on behalf of other on latter's failure to do so, but there is no reciprocal power, the latter has only right to nominate under this section. 27 S. L. R. 186=A. I. R. 1933 Sind. 328.

Powers of arbitrator.

10. The arbitrators or umpire acting under a submission shall, unless a different intention is expressed therein,—

(*a*) have power to administer oaths to the parties and witnesses appearing ;

(*b*) have power to state a special case for the opinion of the Court on any question of law involved , and

(*c*) have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Clause (a).—In an arbitration under a submission the Court cannot issue commission to examine witnesses. *In re Shaw* (1892) I. Q. B 91 ; 47 B. 250=25 Bom. L. R. 853 ; *In re Dreyfuse*, (1893) 9 T. L R, 358 An arbitrator can allow amendments in the pleadings *Edward* v. *Sturgeon*, (1910) 85 T. L R. 162. The examination of witnesses by arbitrator must not be *ex parte*. 34 C. L J. 39 ; see also 27 C. W. N. 933 As to form of oath, *vide* 29 Ind. Cas. 49 The Court has no power to issue commission for examination of witnesses. 75 Ind. Cas. 221=24 Bom. L R. 853. In case of private arbitration, parties must produce witnesses. Arbitrator can not summon witnesses. A. I R 1933 Sind. 300.

Clause (b).—In [illegible] itrator must find affirmativel[illegible] *North* [illegible] ed not [illegible] 18) 118 [illegible] alter- [illegible] se on questions of law. [illegible] with the special case should within specified times give the other party notice and get the award down for argument. Otherwise their award is to be final. *Olympia Oil & Cake Co* v. *Mac. Andrews*, (1918) 2 K. B. 771 ; *J. L. Lyon & Co.* v. *Haddock*, (1919) W. N. 1. But it is doubtful whether the Court in such a case has power to extend the time for giving notice. *Ibid.* After the submission of a special case for the opinion of the Court, the [illegible] *t*, (1892) 2 Q. B 618 [illegible] may simply give judgment *In re George*, [illegible] L R. 228 But the Court cannot make [illegible] . *Weirs*, 118 L. T 111. The Court can set aside an award under s. 14 in a motion under this clause. *Produce Brokers* v. *Blyth*, (1918) L. J. K. B 597 The burden of proof is on the party who disputes an award *Cavallol* v. *Carruthers, & Co*, 30 T. L. R 101. An appeal lies from the decision of the Court. *Re Kirkleatham etc*, (1893) 1 Q B 375 ; *In re Gonty*, (1896) 2 Q. B 439 C A. ; see also *Shubrook* v. *Tuffrell*, (1882) 9 Q. B. D. 621 ; *Boxson* v. *Altrincham*, (1903) 1 K. B. p. 598.

[illegible] umpire is obligatory. 27 C. W N. 494=77 [illegible] ate a special case. *Ibid* When an umpire [illegible] the arbitrators, he must rehear evidence [illegible] S L. R 68 Party cannot apply to Court [illegible] . 107 Ind. Cas 793=A I. R. 1928. Mad. [illegible] in the arbitrators nor can it operate as *res judicata*. A. I. R. 1925 Sind. 83=79 Ind. Cas 986.

Clause (c).—After the arbitrators become *functus officio*, they have no power to rectify mistake *In re Stringer*, (1901) 1 K B 105 ; *Mordue* v. *Palmer*, L. R.

6 Ch. 22 ; *Commissioner of Inland Revenue* v. *Hunter*, (1914) 3 K. B. 423. Mere error of law not distinctly appearing on the face of record is no ground for remission. 69 Ind. Cas. 995=A. I. R. 1922 Cal. 447=49 C. 646.

11. (1) When the arbitrators or umpire have made their award, they shall sign it, and shall give notice to the parties of the making and signing thereof, and of the amount of the fees and charges payable to the arbitrators or umpire in respect of the arbitration and award.

Award to be signed and filed.

(2) The arbitrators or umpire shall, at the request of any party to the submission or any person claiming under him, and upon payment of the fees and charges due in respect of the arbitration and award, and of the costs and charges of filing the award, cause the award, or a signed copy of it, to be filed in the Court, and notice of the filing shall be given to the parties by the arbitrators or umpire.

(3) Where the arbitrators or umpire state a special case under section 10, clause (*b*), the Court shall deliver its opinion thereon ; and such opinion shall be added to, and shall form part of, the award.

Sign.—An award under this section must be in writing and signed. *Laljee* v. *Tewari*, 82 Ind. Cas. 802 ; *Cotha* v. *Thatha*, 5 Ind. Cas. 374=7 M. L. T. 355. Under this section an award must be signed by all the arbitrators, who joined in making the award. But omission to do so is mere irregularity. 36 Bom L. R. 1005 =A. I. R 1934 Bom 476. The validity of an award is not affected where a third arbitrator resigned *Ram*, 1923 Lah. 411= 76 Ind. Cas. 1007. pursuant to this Act. 95 Ind. Cas 21=A

Amount of fees.—There is nothing in this section by which the arbitrators are precluded from taking their fees beforehand. *In the matter of the Arbitration Act*, 17 L W 641=75 Ind. Cas 850=1924 Mad. 174 This section requires the arbitrators to state in the award the amount of fees payable to them *Ibid.*

Clause (2).—The arbitrators are bound, at the request of any party, to file award or a copy thereof in Court, and such an award unless it is set aside or remitted for re-consideration, becomes enforceable as if it were a decree of Court. The award stands on the footing of decree. *Cotha* v *Thatha*, 5 Ind. Cas. 374=7 M L. T. 355. Where an award filed in court is not set aside nor remitted for reconsideration, the award is enforceable as decree. under Sch. 2, para. 21 C. P. C the instance of a party to awarc 143=60 I. A. 71=60 C. 670=A sary for the filing of the award. sion to the contrary, is final, un sets it aside. *Khatoon* v. *Abdool*, 14 Bur L. R. 129=4 L. B. R 249 ; see also 18 Ind. Cas. 978=40 C. 219=17 C W N. 395. As regards jurisdiction of Courts, *Vide* 64 Ind. Cas. 674=15 S L. R 74. This clause read with sub-section (1) of s. 15 shows that the moment an award is filed in Court by the arbitrator it becomes enforceable as if it were a decree of the Court even before the arbitrator has notified to the parties the fact of his filing under this clause. *Udai Chand* v. *Debi Bux*, 60 Ind. Cas. 987=47 C 951. Award is decree where it comes to court for being filed. 142 Ind. Cas. 489=27 S. L. R 109= A I R. 1933 Sind. 78 ; A. I. R 1931 Nag. 170=27 N. L. R. 386 ; A. I R. 1934 Bom. 476=36 Bom. L. R 1005. Award without jurisdiction cannot be filed. A. I. R. 1934 Lah. 642=35 P L R. 482=A L R. 1934 Lah 610 Mere failure to give notice of filing an award does not by itself vitiate an award if it is otherwise valid. *Louis* v *Tara Chand*, 95 Ind Cas 378=A I R 1926 Sind. 242 An award may be filed by any one of the arbitrators 29 Ind Cas 602 As to when an arbitrator becomes *functus officio*—*Vide* 1923A. 31 The order of a Judge sitting on the Original Side of the High Court, whereby he refuses to take an award filed under this Act from off the file is a judgment within the meaning of s. 15 of the Letters Patent and is, therefore, appealable *Campbell* v *Jeshraj*, 46 Ind Cas. 689 ; see also 6 L B. R. 88=17 Ind. Cas. 902. Failure to serve notice renders award invalid. A. I. R. 1927 Rang. 197=5 Rang. 171=102 Ind. Cas 800. One arbitrator

ing the award for complying with s. 11 (2), Arbitration Act is not a judgment within cl 13 Letters Patent 114 Ind. Cas. 521=A. I. R. 1928 Rang. 110. Court can not enter into enquiry to ascertain which of the two possible interpretations of the document should be accepted. 29 Bom. L R. 660=104 Ind. Cas. 94. Award of Committee of Appeal, on appeal from umpire's award according to contract by parties can be filed 103 Ind. Cas. 648. The mere receipt of the award by the Court is the filing of the award. A. I R. 1931 Sind. 160.

12. The time for making an award may, from time to time, be enlarged by order of the Court, whether the time for making the award has expired or not.

Power for Court to enlarge time for making award.

Notes—Under this section the Court has power to extend the time even where the time for making the award has expired and the award has already been made. *Tejpal* v. *B Nath Mal*, 46 C. 1059 ; see also A. I. R. (1926) Sind 8 ; 125 Ind. Cas. 425 , 129 Ind. Cas. 886 ; 55 B. 452 The court can grant such extension even where it is expressly stipulated that there should be no extension. *In re Denton*, L. R. 9 Q B. 117 ; see also (1900) 2 Q. B. 253 C. A The Court has jurisdiction to extend time for the umpire's award as well. *May* v. *Harcourt*, 13 Q B. D. 688 ; *Lord* v. *Lee*, L. R 3 Q. B. 404. The power of such enlargement of time is discretionary with the Court. *In re Dare Valley Co.* (1869) L. R. 4 Ch. 554. But the Court should exercise its discretion on a consideration of all these circumstances of the case and is bound to consider whether the case is a fit one for the grant of such an indulgence. 28 Ind. Cas. 85=8 S. L. R. 269 ; see also 16 Ind. Cas. 861 ; 22 Ind. Cas 16 ; 78 Ind. Cas. 521 An appellate Court has power to extend the time in proper cases. 40 C. 1059. But the courts of law should not lightly interfere with the discretion deliberately exercised by a lower Court. 28 Ind. Cas. 85=8 S L. R. 269 ; 26A 338. But such power rests with the Court and not with the arbitrator. 16 L. W. 657=70 Ind. Cas. 353 ; 54 Ind. Cas 668. Order refusing to set aside an award is a judgment within cl. 15 Letters Patent. 46 Ind. Cas. 687. Court has discretion to extend time for filing award. A. I. R. 1935 Lah. 191 ; see also A. I. R. 1935 Sind 3.

13. (1) The Court may, from time to time, remit the award to the reconsideration of the arbitrators or umpire

Power to remit award.

(2) When an award is remitted under sub-section (1), the arbitrators or umpire shall, unless the Court otherwise directs, make a fresh award within three months after the date of the order remitting the award

Notes—This section is based on section 10 of the English Arbitration Act 1889 which again re-enacts the Common Law Procedure Act. 1854 s. 8 *Mills* v. *Buryers* (1856) 3 K & J. 66 and all cases decided under s. 8 of the last act may be cited under this section. *In re Keighley*, (1893) 1 Q. B p. 411. The power to remit an award is given by this section and apart
In re Keighley. (1893) 1 Q. B. 405 ; see
The effect of this section is to treat all su
they contained a clause giving the Co
arbitrators or umpire. (1914) 2 K. B. 147 ; *Sprague* v. *Allen*, 15 T. L. R. 150. The Court can exercise this power even where the arbitrators are *functus officio*. *In re Strienger*, (1901) 1 K. B. 105 An award may be remitted where the arbitrators are
; 66 Ind. Cas. 389 The ground which
l may be considered sufficient to remit
see also 78 L. T. 409 The Court has
uld be remitted or set aside. *Odlum* v.
will not interfere unless the discretion
353. It may be remitted where evidence is
Sprague v. *Allen*, 15 T. L. R. 150 But such
evidence is kept back by one of the parties. *In re*
. An award cannot be remitted in part. 74 Ind.
ard cannot be remitted for misreception of evi-

dence nor it can be set aside. *Mclean* v. *Mercus*, (1896) 6 T. L. R. 355. Power of [illegible] Sind, 51=19 S. L. R. 152= [illegible] amounts to refusal to file [illegible] J. 193. Unnamed portion of the award is enforceable as decree under s. 515 34 C. W. N. 268=A. I. R. 1930 Cal. 468=127 Ind. Cas. 60. Award is remitted without fixing time for its return when award is made Court can enter time for delivery of the award. A. I. R. 1928 Mad. 69=54 M. L. J. 49 (F. B.)=109 Ind. Cas. 70. Where an arbitrator exercises jurisdiction in excess of the reference it should be remitted. *Hooper* v *Balfour* (1890) 62 L T. 646 ; *Re Green*, 63 L. T. 325. The award may be remitted for mistake of law or fact. *Dinn* v. *Blake*, L. R. 10 C. P. 368 ; *Hooper* v. *Balfour*, 62 L. T. 646 ; see also (1912) A. C. 673 ; *May* v. *Mills*, (1914) T. L R. 287 ; 70 Ind Cas 353=16 L. W 657. Where an award should be set aside and not remitted *vide* 34 C L J. 39.

14 Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set aside the award.

Power to set aside award

Scope—The words "arbitration and award" in s. 14 and "award" in para. 15, Sch II, Civil Procedure Code are same. 32 Bom. L. R. 389=A. I. R. 1930 Bom. 431. Jurisdiction of court to receive awards is very narrower than that of court of appeal. 122 Ind. Cas 516 Party's accepting benefit even under protest may preclude him from objecting. 121 Ind Cas. 164. There is no misconduct where arbitrators act within authority given by reference 121 Ind. Cas. 161=A. I. R. [illegible] ducted in over- [illegible] nd. Cas 360. [illegible] ard is sought. [illegible] the question [illegible] nt to making an award is not contemplated. 95 Ind. Cas. 378=A I R. 1926 Sind. 242. An award under English Arbitration Act cannot be set aside on the ground of misconduct in Indian Court 95 Ind Cas. 21. Misconduct does not necessarily imply moral turpitude. It includes neglect to duties and responsibilities 76 Ind. Cas 275 Ministerial acts, *e. g.* receiving statements and documents before the enquiry commences of arbitrators in the absence of parties are valid. A : I R 1929 Mad. 274=75 Ind. Cas 850 A suit lies to impeach an award. 31 C L J. 283=56 Ind. Cas. 541. Where an award is filed in court, objection to jurisdiction of arbitrator can be raised even by separate suit Objection if raised before Arbitration Court under this section and decided, separate suit is barred by Civil Procedure Code s. 11. 137 Ind. Cas. 846=33 P. L. R. 365=A. I R 1932 Lah. 378. Where there is no valid reference by reference of fraud, misrepresentation or mistake, party can file objections under s. 14 136 Ind. Cas. 806=A. I R. 1932 Sind 20 ; see also A. I. R. 1933 Sind. 207 ; A. I. R. 1934 Bom. 476=36 Bom. L. R. 1005.

Misconduct—The following are instances of misconduct :—

(*a*) **Corruption or partiality.**—*Tullis* v. *Jackson*, (1892) 3 Ch. 441 ; *In re Whitley* (1891) 1 Ch. 558 ; *Titenson* v. *Peat* 3 Atk 529 ; *Morgan* v *Mather*, 2 Ves. Jr. 15 ; *Burton* v *Knight* 2 Vern. 514. *Earl* v. *Stocker* 2 vern, 251.

Bias—*Vide* (1910) 1 K. B. 327.

Lega[illegible]
Whately [illegible]
allow opp [illegible]
391=41 [illegible]
absence of one of the parties will be a ground for setting aside an award. *Re Gregson* (1894) 70 L. T. 106 ; see also 88 L J. K. B 1242 ; 70 Ind. Cas. 353 ; 65 Ind. Cas. 577 ; 27 Ind. Cas. 135 ; 73 Ind. Cas 470=44 M. L J. 263 ; 14 L. J. Q. B 17 ; (1914) 3 K. B. 423 ; (1894) 1 Q. B. 112. Where parties given opportunity to adduce evidence, there is no misconduct if arbitrators proceed on evidence before them. A. I. R. 1933 Sind. 300.

Want of jurisdiction—Objections to award on ground of want of jurisdiction in arbitrators is an application under this section. A. I. R. 1935 Lah. 602.

A decision contrary to law or fact does not vitiate an award. (1891) A. C. 39.

Award when filed to be enforceable as a decree

15. (1) An award on a submission, on being filed in the Court in accordance with the foregoing provisions, shall (unless the Court remits it to the reconsideration of the arbitrators or umpire, or sets it aside) be enforceable as if it were a decree of the Court.

(2) An award may be conditional or in the alternative.

Illustration.

A dispute concerning the ownership of a diamond ring is referred to arbitration. The award may direct that the party in possession shall pay the other party Rs 1000, the said sum to be reduced to Rs. 5 if the ring is returned within fourteen days.

Scope—The necessity of obtaining a judgment is re-moved by this section. *Selby* v. *Whitebread*, (1917) 1 K. B 736 The award is not a decree of the Court, [illegible] 366 (P C); [illegible] 318; [illegible] nda- [illegible] as a [illegible] rder [illegible] d is [illegible] Court for putting it on the file, that is, the day on which it is received in the Court for that purpose 27 S L R 109=142 Ind. Cas 489=A. I. R. 1933 Sind. 78. Although decree based on award cannot be executed an award can be executed. A. I. R. 1933 Pesh. 66=143 Ind Cas 435 Holder of award can enforce it under order 21, rule 50 by applying to High Court 35 Bom L R 941=A. I. R. 1933 Bom 433 Award filed under s 11 becomes enforceable under s [illegible] to execution apply to it. 27 N L. R 386=A. I [illegible] of the Dekkhan Agriculturists Relief Act, 18 [illegible] ed- ings taken for enforcement of awards under s. [illegible] R. 475=A. I. R. 1931 Sind 97. (F B.).

Power to remove arbitrator or umpire.

16. Where an arbitrator or umpire has misconducted himself, the Court may remove him.

Notes—Cases which justify the revocation of a submission under section 5 or the setting aside of an award under section 14, would justify the removal of an arbitrator under this section.

Costs.

17. Any order made by the Court under this Act may be made on such terms as to costs or otherwise as the Courts thinks fit.

Notes—Ordinarly the Court should provide for costs. *Burness* v. *Youngs*, (1898) 1 Ch. 414. But the Court may also leave the question of costs to the arbitrator under certain circumstances *J. Aird* v *Bristol Corporation*, 28 T. L R. 278. As regards the order for costs *vide*, *Taylor* v. *Denny*, (1912) W. N 186 (H. L); *In re Hollyday*, (1888) 20Q. B D. 699; *Gregson* v. *Armstrong*, (1894) 10 L. T. 106 Where a reference to arbitration is held not valid, a court cannot pass an order for costs. 109 Ind. Cas. 175 (2)

Forms.

18. The forms set forth in the second schedule, or forms similar thereto, with such variations as the circumstances of each case require, may be used for the respective purposes there mentioned, and, if used, shall not be called in question.

Power to stay proceedings where there is a submission

19. Where any party to a submission to which this Act applies, or any person claiming under him, commences any legal proceedings against any other party to the submission, or any person claiming under him, in respect of any matte [illegible] legal proceedings may, at any time [illegible] vritten statement or taking any other st [illegible] judicial authority

before which the proceedings are pending,"* to stay the proceedings; and "such authority,"* if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Scope—Where the object of the suit was to impeach the validity of the arbitration clause in the contract, and the suit was not in respect of any matter agreed to be referred to arbitration, the provisions of this section do not apply. *Atmaram* v. *Gajanmal*, 61 Ind. Cas. 141=14 S. L. R. 123. The stay under this section would be granted irrespective of the number of arbitrators *Manchester* v. *Pearson*, (1900) 1. Q. B. 606. Onus is on party opposing to stay to show why stay should be refused. 117 Ind. Cas 417. Application for stay should be made at the earliest opportunity. 107 Ind. Cas 434=A I. R 1928 Sind. 91; 121 Ind. Cas. 574=33 C W N. 888 Where all defendants are bound by submission all need not apply *for stay of suit* 139 *Ind Cas.* 769=26 *S. L. R.* 497=*A. I. R.* 1932 Sind 111 Where suit is pending in Judicial Commissioner's Court separate application under s. 19 for stay should be filed. 140 Ind. Cas. 626=27 S. L. R. 169=A. I. R. 1933 Sind. 75. Application for stay is not barred if motion of adjournment is made subsequently. *Ibid*; see also A. I. R. 1931 Sind 200; 38 C. W. N 737=61 C. 702. This section applies where there is a valid submission under this section. *Vide* (1903) 1 K. B. 249; *Law* v *Garret*, 8 Ch. D. 26; *Kirchner* v. *Gonbon*, (1909) 1 Ch. 413; 31 B. 236, 45 B. 1=22 Bom L R. 242; 57 Ind. Cas 997; 61 C 702=38 C. W. N. 737=A I. R 1934 Cal 796; 28 S. L. R. 223=A. I R. 1934 Sind 200; 139 Ind Cas. 769=26 S L R 497=A I R. 1932 Sind. 111. Application for postponement of hearing is stop of proceeding irrespective of intention. A. I. R. 1935 Sind. 62 But the existence of a valid reference is a condition precedent. *Randell* v. *Thompson*, 1 Q. B. D. 748; *Dentche* v. *Bisco*, 20 Q B. D. 77; see also 43 C. L. J 297.

Any person claiming under him—As to whether it applies to trustees in bankruptcy. *vide Piercy* v *Young*, 14 Ch. D. 200; *Pennel* v. *Walker*, 26 L. J. C P. 9.

Any Court.—The Courts in section 4 (a) are the Courts enforcing the machinery of arbitration in the areas where the Act applies. 57 Ind Cas 997; see also *Morrison* v *Brooker*, (1908) 1 K B 403; *Pina* v. *Rio*, (1911) 105 L T. 846, *Hamlyn* v *Talisker*, (1894) A C 202; 52 Ind. Cas. 130; 63 Ind Cas 813=43 A. 553; 7 Ind. Cas 864; but see 31 B 236 Court means trial Court and not District Court 130 Ind. Cas 769; see also 124 Ind. Cas 797; 111 Ind Cas 641, A. I. R. 1933 Sind 376 (F. B); A. I. R. 1931 Lah. 644; A. I. R 1933 Bom. 202, 55 B. 503; 25 S L. R. 106.

In respect of any matter—That is to be decided by the court. *Piery* v. *Young*, 14 Ch. D. 200; *Renshow* v. *Queen*, (1897) 1 Q B 662; *Parry* v *Liverpool*. (1900) 1 Q. B 339; see also 66 Ind. Cas 741; 43 A. 279=59 Ind. Cas. 784; 25 C. W. N. 62; 56 Ind. Cas. 160; 47 C. 1020; 35 Ind. Cas. 536; 45 B. 1; 1932 A. L J. 1055.

Appeal.—No appeal lies from an order made under s. 19 A. I. R. 1931 Lab. 96=
759 Order refusing to stay proceed-
120 Ind. Cas. 226; see also A. I. R.
ut order granting stay of suit pend-
47 A 179. But revision lies against
order refusing to stay proceedings under s. 19 A. I. R. 1931 Lah. 644=13 Lah 59.

Power for High Court to make rules

20. The High Court may make rules consistent with this Act as to—

(a) the filing of awards and all preceedings consequent thereon or incidental thereto;

(*b*) the filing and heating of special cases and all proceedings consequent thereon or incidental thereto.

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*The words within quotations have been substituted by Act 21 of 1933.

(c) the transfer to Presidency Courts of small causes for execution of awards filed, where the sum awarded does not exceed two thousand rupees ;

(d) the staying of any suit or proceeding in contravention of a submission to arbitration ; and

(e) generally, all proceedings in Court under this Act.

N. B.—This section corresponds to section 21 of the English Act.

Amendment of section 21 Act I, 1877

21. In section 21 of the Specific Relief Act, 1877* after the words, "Code of Civil Procedure" the words and figures, "and the Indian Arbitration Act 1899" shall be inserted, and for the words, a "controversy" the words "present or future differences," shall be substituted.

Crown to be bound.

22. The provisions of this Act shall be binding on the Crown.

Notes.—This section corresponds to section 23 of the English Arbitration Act, 1889. According to English Common Law the Crown neither pays nor receives costs. *R.* v. *Archbishop*, (1902) 2 K. B. 503 ; *Johnson* v. *R* (1904) A. C. 817 ; 29 T. L. R (700) P. C. But that rule is not applicable under this Act.

Special provisions as to application of Act to Rangoon

23 † (1) This Act shall apply within the local limits of the ordinary civil jurisdiction of the "High Court of Judicature at Rangoon" ‡ in cases where, and if the subject-matter submitted to arbitration were the subject of a suit, the suit could, whether with leave or otherwise, be instituted within those local limits.

(2) For the purposes of this Act, the local limits aforesaid shall be deemed to be a presidency-town.

THE FIRST SCHEDULE.

(*See Section 6*)

PROVISIONS TO BE IMPLIED IN SUBMISSIONS

I. If no other mode of reference is provided, the reference shall be to a single arbitrator.

II. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

III. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may, from time to time, enlarge the time for making the award.

IV. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

V. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the [illegible] by him, may,

[illegible] ough them [illegible] ing in force, [illegible] in relation [illegible] the arbitra- [illegible] ents within their possession or power respectively which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.

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* I of 1877.

† Section 23 has been substituted by Act 6 of 1900, s. 47.

‡ The words within the quotations have been substituted by Act 11 of 1923.

VII. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath.

VIII. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

IX. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom, and in what manner, those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

THE SECOND SCHEDULE.

(See Section 18)

Form I

Submission to single Arbitrator.

In the matter of the Indian Arbitration Act 1899 :—

Whereas differences have arisen and are still subsisting between A. B. of and C. D of concerning

Now we, the said A. B. and C. D. do hereby agree to refer the said matters in difference to the award of X. Y.

(*Signed*) A B.
C. D

Dated the *189* .

Form II.

Submission of Particular Dispute to single Arbitrator.

In the matter of the Indian Arbitration Act, 1899 —

Whereas differences have arisen and are still subsisting between A B. of and C. D of concerning ;

Now we, the said A B. and C. D. do hereby agree to refer the said matters in difference to the award of X. Y.

(*Signed*) A B.
C. D.

Dated the *189* .

Form III.

Appointment of single Arbitrator under Agreement to refer further Differences to Arbitration.

In the matter of the Indian Arbitration Act, 1899 —

Whereas, by an agreement in writing, dated the day of 18 , and made between A B of and C. D of , it is provided that differences arising between the parties thereto shall be referred to an arbitrator as therein mentioned ;

and whereas differences within the meaning of the said provision have arisen and are still subsisting between the said parties concerning ;

Now we, the said parties, A. B. and C. D , do hereby refer the said matters in difference to the award of X. Y.

(*Signed*) A. B.
C. D.

Dated *189* .

From IV.

Enlargement of Time by Arbitrator by Endorsement on Submission.

In the matter of the Indian Arbitration Act, 1899, and an arbitration between A. B. of and C. D. of —

I hereby enlarge the time of making my award in respect of the matters in difference referred to me by the within (or above) submission until the day of 189 .

(*Signed*) X. Y.
Arbitrator.

Dated *189* .

FORM V.

Special Case.

In the matter of the Indian Arbitration Act, 1899, and an arbitration between A. B. of and C. D. of :—

The following special case is, pursuant to the provisions of section 10, clause (*b*), of the said Act, stated for the opinion of the *:—

(Here state the facts concisely in numbered paragraphs.)

The questions of law for the opinion of the said Court are :—

First, whether ——————————————————

——————————————————————

Secondly, whether ——————————————

Dated the *189* . (*Signed*) X. Y. *Arbitrator.*

FROM VI.

Award.

In the matter of the Indian Arbitration Act, 1899, and an arbitration between A. B. of and C. D of :—

Whereas in pursuance of an agreement in writing dated the day of 189 , and made between A B of and C. D. of , the said A. B. and C. D. have *referred to me*, X. Y., the matters in difference between them concerning (*or as the case may be*) ;

Now I, the said X. Y. having duly considered the matters submitted to me, do hereby make my award as follows :—

I award—

(*1*) *that* ——————————————————

——————————————————————

(2) that ——————————————————

Dated the *189* . (*Signed*) X. Y. *Arbitrator.*

THE BANKERS' BOOKS EVIDENCE ACT, 1891.

ACT NO. XVIII OF 1891.

Received the G. G's. Assent on the 1st October, 1891.

An Act to amend the Law of Evidence with respect to Bankers' Books.

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' Books ; It is hereby enacted as follows :—

Title and extent.

1. (1) This Act may be called The Bankers' Books Evidence Act, 1891.

(2) It extends to the whole of British India † ;

Notes.—This Act is based on English Bankers' Books Evidence Act, 1879 (42 Vict. c. 11). The reason of its enactment is thus stated : "It is sometime since the Imperial Parliament recognised the great inconvenience which is caused to bankers

* Here specify the Court.

† Certain words after this repealed by Act X of 1914 have been omitted.

from being required to produce their books in Courts of Justice. In the first place, these books are usually of great size and weight and in the second place, they are required for entering the daily transactions of the bank. Facilities were provided for proving the contents of the bankers' books by means of certified copies, and in the year 1891 an Act was passed for British India upon the same lines."—*Statement of Objects and Reasons of Act XII of 1900.*

Definitions. 2. In this Act, unless there is something repugnant in the subject or context—

[(1) * "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or dependencies thereof or in British India or incorporated by an Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent :]

(2) "Bank" and "banker" mean—

(*a*) any company carrying on the business of bankers,

(*b*) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided,

[(*c*)† any Post Office Savings Bank or Money-order office :]

(3) "bankers' books" include ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank :

(4) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration :

(5) "the Court" means the person or persons before whom a legal proceeding is held or taken :

(6) "Judge" means a Judge of a High Court :

(7) "trial" means any hearing before the Court at which evidence is taken : and

(8) "certified copy" means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

Company—This definition was added by Act XII of 1900. The original definition of Company was too narrow It failed to provide for banking companies carrying on business in the country but registered or incorporated in the United Kingdom, and in the case of *Empress* v. *Patrick McGuire*, 4 C W N. 433 (F. B) it was discovered that the entries in the books of Delhi and London Bank could not be proved by copies. This definition does not include foreign banks unless they are included by notification issued under section 3.—*Vide Statement of Objects and Reasons to Act XII of 1900.*

Bank and Banker—In the English Act the definitions of Bank and Banker are thus given :—"In this Act the expressions 'bank' and 'banker' mean any person, persons, partnership or company carrying on the business of bankers and having only made a return to the Commissioners of Inland Revenue, and also Savings Bank" certified under the Act relating to Savings Banks, and also Post Office Savings Bank." As regards whether the Loan Register of a Public Debt office is a banker's book *vide Chandi* v. *Boistab*, 31 C. 284=8 C W. N. 125.

Bankers' Books.—The definition is taken from the English Act .

Court—A Magistrate before whom criminal proceedings are pending is a Court. *R.* v. *Kinghorn*, (1908) 2 K. B 949 *Vide* s. 9 of that Act. See also the definition of legal proceedings—*vide* s. 10

Certified copy—*Vide Chandi* v *Boistab*, 31 C 284=8 C W. N. 125

* The definition of 'Company" has been substituted for the original one by the Bankers' Books Evidence Act (XII of 1900), s. 2.

† To sub-s (2) of s. 2, cl (*c*) has been added by s 2 of the Bankers' Books Evidence Act (1 of 1893).

Power to extent provisions of Act.

3. The Local Government may, from time to time, by notification in the official Gazette, extend the provisions of the Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account books, namely, a cash-book, a day-book or journal, and a ledger, and may in like manner, rescind any such notification

Notes—The Local Government may include all foreign banks under the Act by virtue of the power of notification given under this section.

Mode of proof of entries in bankers' books.

4. Subject to the provisions of this Act, a certified copy of any entry in a bankers' book shall in all legal proceedings be received as *prima-facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

Notes—This section corresponds to section 3, 4 and 5 of the English Act. Before certified copy of any bank is admissible in evidence, it must be proved that the bank is one to which the provisions of the Bankers' Books Evidence Act apply. Unless that is proved, certified copies of entries in their books ought not to be admitted in evidence *Empress* v *Patrick McGuire*, 4 C. W. N. 433 (F. B). This section lays down that a certified copy of any entry in a bankers' book shall be received as *prima facie* evidence of the existence of any such entry. The term "certified copy" is defined in clause (8) of section 2. According to that definition the required statement should be subscribed [illegible]

[illegible] authorised to take [illegible] this section makes copies of [illegible] thus the entries in a defendant banker's [illegible] *Harding* v. *Williams*, 14 Ch. D. 197. [illegible] 94. When before the Act a party had a [illegible] to issue a *subpœna duces tecum* to compel bankers to produce their books, he can now obtain an order under this section [illegible], 3 Ch. D. 498. This [illegible] utilised before trial [illegible] discovery. *Parnell* v. [illegible] L. T. 854, cited in [illegible]

Case in which officer of bank not compellable to produce books.

5. No officer of a bank shall in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

Notes—A banker is only exonerated by this section from personal attendance in Court when he complies with the provision of section 4 *Emmott* v. *Star Newspaper Co.*, 62 L. J. Q. B 77. Except when the bank is a party, this section exempts the banker from being compelled to produce any book that can be proved by a copy or to appear as a witness unless specially ordered to do so.

Inspection of books by order of Court or Judge.

6. (1) On the application of any party to a legal proceeding, the Court or a Judge may order that such party [illegible] to inspect and take copies of [illegible] a banker's book for any of the [illegible] proceeding, or may order the bank to prepare and produce [illegible] be specified in the order, certified copies of all such entries [illegible] a further certificate that no other entries are to be found in [illegible] bank relevant to the matters in issue in such proceeding [illegible] certificate shall be dated and subscribed in manner here[illegible] reference to certified copies.

(2) An order under this or the preceeding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

Application.—An application may be made *ex parte*. *Arnott* v. *Hayes*, 36 Ch. D. 731. But a notice should be issued. *Davies* v. *White*, 53 L. J. Q. B. 275; A. I. R. 1932 Bom. 428=34 Bom L. R 743=141 Ind. Cas. 870. So where a party desires an order, under this section on his own behalf the Court ought to grant it *ex parte*; but where he applies against the other party the Court ought not to make the order without notice to the other party *Tricumlal* v. *Lakhmidas*, 5 Bom. L R 865. The power under this section is discretionary (*Emmott* v. *Star Newspaper*, 62 L. J. Q. B. 77) and should be exercised with great caution (*Arnott* v. *Hayes* 36 Ch. D 738; *South Staffordshire Tramways Co* v *Ebbsmith*, 2 Q B 669) and on sufficient grounds only, [*Perry* v *Phosphor Bronze Co.* (1894) 71 L. T. 854]—*Yearly Practice*, 1921, p. 469. But where the Court is not satisfied that the application is not for the purpose of obtaining inspection beyond what is allowed under the ordinary procedure, the Court ought to refuse the application under the section *Tricumlal* v. *Lakhmidas*, 5 Bom. L. R. 865 This section applies to all books, even though not in daily use. *Asylum for Idiots* v. *Handysides*, 22 T. L R 573. Accounts of persons not parties to the litigation can also be inspected *Harward* v. *Beal*, 23 Q. B. D 1. But such inspection should be allowed with great caution *Pollock* v. *Earle*, (1898) 1 Ch. 1. An order under this section is not open to revision, P L R. (1900) 237. Order under this section should not be passed *ex parte*. Notice to other party should be given. 141 Ind. Cas 870=34 Bom L. R. 743=A. I R 1932 Bom. 428.

7. (1) The costs of any application to the Court or a Judge under or for the purposes of this Act and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

Costs.

(2) *Any order made under this section for the payment of costs to or by* a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself:

[illegible] to derogate from [illegible] ossess for the en- [illegible] of costs.

Notes—This section corresponds to section 8 of the English Act.

THE INDIAN BAR COUNCILS ACT, 1926.

ACT NO. XXXVIII OF 1926.

(PASSED BY THE INDIAN LEGISLATURE.)

Received the assent of the Governor General on the 9th September, 1926.

An Act to provide for the constitution of Bar Councils in British India and for other purposes.

WHEREAS it is expedient to provide for the constitution and incorporation of Bar Councils for certain Courts in British India, to confer powers and impose duties on such Bar Councils, and to consolidate and amend the law relating

to legal practitioners entitled to practise in such Courts ; It is hereby enacted as follows :—

Bar Councils.—This Act contemplates different Bar Councils. The reason of this is thus stated by the Bar Committee ; "From a practical point of view nothing is to be gained by setting up a central body which shall prescribe different qualifications for admission to the profession in the different provinces. A central body would necessarily have inadequate knowledge of local conditions and, there are not wanting indications that a provincial bar would not readily submit to being governed by a body, which would necessarily contain a majority of members insufficiently acquainted with its special needs and difficulties".

Courts—The word "Courts" is not defined in this Act. It means, however, the highest Courts.

Preliminary.

Short title. extent, application and commencement

1. (1) This Act may be called the Indian Bar Councils Act, 1926.

(2) It extends to the whole of British India, and shall apply to the High Courts of Judicature at Fort William in Bengal, and at Madras, Bombay, Allahabad, Patna and Rangoon and to such other High Courts within the meaning of Clause (24) of section 3 of the General Cl uses Act, 1897* as the Governor-General in Council may, by notification in the Gazette of India, declare to be High Courts to which this Act applies

(3) This section and sections 2, 17, 18 and 19 shall come into force at once ; and the Governor General in Council may, by notification in the Gazette of India, direct that the other provisions of this Act, or any provision thereof specified in the notification, shall come into force in respect of any High Court to which this Act applies on such date as he may by the notification appoint.

[illegible] :e this Act applies to the High Courts of [illegible] and at Madras, Bombay, Allahabad Patna [illegible] e Lahore Hight Court in the first instance. [illegible] ther High Courts" includes the Chief Court of [illegible] Courts at Nagpur, Sind, Mandalay, Peshwar. etc. According to Clause 24 of section 3 of the General Clauses Act the term "High [illegible] the part of British India in [illegible] operates. The Lahore High [illegible] Council for Punjab already [illegible]

Commencement of the Act.—So far as the six High Courts mentioned in para. (2) are concerned [illegible] once As [illegible] blished by [illegible] indepen[illegible] of the Act. 125 Ind. Cas. 477.

Interpretation.

2. In this Act unless there is anything repugnant in the subject or context,—

(a) "Advocate" [illegible] the roll of advocates of a High Court [illegible]

(b) [illegible] re is no Advocate-General, the Government Advocate and, where there is no Advocate-General or Government Advocate, such officer as the Local Government may declare to be the Advocate-General for the purposes of this Act ;

(c) "High Court" means a High Court to which this Act applies ; and

(d) "Prescribed" means prescribed by rules made under this Act.

Notes—These definitions are for the purposes of the Act Unless there be any repugnancy in the subject or context these meanings are to be applied.

Advocate—According to clause (4) of section 3 of the General Clauses Act, a barrister means a barrister of England or Ireland, or a member of the Faculty of

* X of 1897.

Advocates in Scotland. But an Advocate under this section means an advocate in the roll of advocates of a High Court under the provision of this Act.

Advocate-General.—This definition is for the purpose of this Act and it should not be extended to other Acts. Advocate-General includes acting Advocate-General 34 Bom. L. R. 71 (F. B.).

Constitution of Bar Councils.

Constitution and incorporation of Bar Councils.

3. (1) For every High Court a Bar Council shall be constituted in the manner hereinafter provided.

(2) Every Bar Council so constituted shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property, both movable and immovable, and to contract, and shall by the name of the Bar Council of the High Court for which it has been constituted sue and be sued.

Every High Court.—A Council can be constituted for every High Court and not for every province.

Body Corporate.—It is a corporation aggregate like a trade union and is created by this Act. Perpetual succession, a common seal and right to acquire and hold property are incidental to all corporations. "A corporation aggregate" says *Lord Coke*, "is only an abstraction and rests only in intendment and consideration of law. It is invisible and immortal ; it has no soul, neither is it subject to the imbecilities of the body."

Composition of Bar Councils.

4. (1) Every Bar Council shall consist of fifteen members, of whom—

(*a*) one shall be the Advocate-General ;

(*b*) four shall be persons nominated by the High Court, of whom not more than two may be Judges of that Court ; and

(*c*) ten shall be elected by the advocates of the High Court from amongst their number.

(2) Of the elected members of every Bar Council not less than five shall be persons who have for not less than ten years been entitled as of right to practise in the High Court for which the Bar Council has been constituted.

(3) Of the elected members of the Bar Council to be constituted for the High Courts of Judicature at Fort William in Bengal and at Bombay such proportion as the High Court may direct in each case shall be persons who have, for such minimum period as the High Court may determine, been entitled to practise in the High Court in the exercise of its original jurisdiction, and such number as may be fixed by the High Court out of the said proportion shall be barristers of England or Ireland or members of the Faculty of Advocates in Scotland.

(4) There shall be a Chairman and Vice-Chairman of each Bar Council elected by the Council in such manner as may be prescribed :

Provided that the Advocates General of Bengal, Madras and Bombay shall be Chairman *ex-officio*, respectively, of the Bar Councils constituted for the High Courts of Judicature at Fort William in Bengal, at Madras and at Bombay.

Sub-Clause (b).—"We think it desirable to indicate clearly that Judges of the High Court may be represented on the Bar Council, and have provided that two out of the four persons nominated by the Court may be Judges."—*Report of the Select Committee.*

Composition of Bar Councils.—The Council should consist of 15 members, four of whom should be nominated by the High Court, including, where possible, the Advocate-General or the Government Advocate and the Government Pleader. The remaining eleven, of whom six should be advocates of at least 10 years' standing, should be elected by advocates of the High Court, provided that in Calcutta and Bombay the High Courts should determine how many of the eleven

should be advocates entitled to practise on the original side. The nominated members should ordinarily be advocates, but it should be left to the High Courts to nominate Judges past and present —*Statement of Objects and Reasons,*

Advocates-General —"We think it is essential, in view of the *status* of the Advocates General in the Presidency-towns, that they should be made *ex-officio* Chairman of the Bar Councils to which they respectively belong."—*Report the Select Committee.*

Special provisions regarding constitution of first Bar Councils.

5. (1) Notwithstanding anything contained in clause (*c*) of sub section (1) of section 4, the elected members of the first Bar Council constituted under this Act for any High Court shall be elected by and from amongst the advocates, vakils and pleaders who are on the date of the election entitled as of right to practise in the High Court.

(2) The terms of office of the nominated and elected members of any such first Bar Council shall be three years from the date of the first meeting of the Council.

Advocates, vakils and pleaders, etc —The attorneys are excluded from the operation of this Act as the majority supported the view that the attorneys should have a completely separate organisation *Vide Bar Committee's Report.*

Tenure of Office —The life of the first Bar Council is three years from the date of the first meeting of the council and not from the date of election

Power to make rules regarding constitution and procedure of Bar Councils.

6. (1) Rules, consistent with this Act, may be made to provide for the following matters, namely:—

(*a*) the manner in which elections of members of the Bar Council shall be held; the method of determining, in accordance with the provisions of sub-sections (2) and (3) of section 4, the candidates who shall be declared to have been elected; the manner in which the result of elections shall be published; and the manner in which and the authority by which doubts and disputes as to the validity of an election shall be finally decided;

(*b*) the terms of office of nominated and elected members of the Council;

(*c*) the filling of casual vacancies in the Council;

(*d*) the convening of meetings of the Council, and the quorum necessary for the transaction of business thereat,

(*e*) the manner of election and the respective terms of office of the Chairman, in cases where the Chairman is to be elected, and of the Vice-Chairman; and

(*f*) any matter incidental or ancillary to any of the foregoing matters.

(2) The first rules under this section shall be made by the High Court, but the Bar Council may thereafter, with the previous sanction of the High Court, add to, amend or rescind any rules so made.

(3) No election of a member or members to the Council shall be called in question on the ground that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date fixed for the election has, not less than thirty days before that date, been published in the local official Gazette of the province, or of each province, as the case may be, in which the High Court exercises jurisdiction.

(4) Rules made under clause (*b*) of sub-section (1) may provide for the retirement of members from office by rotation and for the manner in which the order of such retirement shall be determined.

Notes [illegible] s made under this clause are we [illegible] by the Bar Councils themselves. [illegible] be made only in the first instance [illegible] cil with the previous sanction of [illegible] Under this section provision is made that the first rules shall be made by the High Court, thereafter changes can

be made, with the previous sanction of the High Court, in the way of amendment or addition by the Bar Councils themselves.—*Vide Proceedings in Council*; see also A. I. R. 1935 All. 295

Power of Bar Councils to make bye-laws

7. The Bar Council may make bye-laws consistent with this Act and any rules made thereunder to provide for any of the following matters, namely :—

(*a*) the appointment of such ministerial officers and servants as the Bar Council may deem necessary, and the pay and allowances and other conditions of service of such officers and servants ; and

(*b*) the appointment and constitution of Committees of the Council, the procedure of such Committees, and the determination of the powers or duties of the Council which may be delegated to such Committees.

Notes.—This section authorises the Bar Council which owes its origin to a Statute to make bye laws consistent with this Act and consistent with the rules made under this Act. These bye-laws may deal with the appointment of ministerial officers and servants of the Bar Council as well as the appointment and constitution of committees "A bye-law must relate to subjects within the scope of the corporate powers. It must not be *ultra vires*. In other words, it must be confined to the limits of the subject-matter handed over by the Legislature and dealt with by the subordinate authority and must not impose any restrictions not authorised by the language of the Statute." Aiyangar's *Municipal Corporation* Vol. III p. 411 A bye-law must not be repugnant to the general provisions of the Act. If it violates any of the terms of the sections of the Act it is *ultra vires* *Narain* v. *Corporation of Calcutta*, 37 C 545=14 C W N. 614 ; see also *London's* (*Chamberlain*) *Case.* 5 Co. Rep 662, 63 (a) ; *Corporation of Calcutta* v *Jadub*, 20 C. 605 ; *Ganga Narain* v. *Municipal Board of Cawnpore*, 19 A 313 ; *Mahesh* v *Basanta*, 10 C. W. N 667 ; *Surat City Municipality* v. *Tyabji*, 32 B. 460 ; *Beni* v. *Moti*, 21 C 837 ; *Tribhovan* v. *Ahmedabad Municipality*, 27 B. 221.

Admission and enrolment of advocates.

Enrolment of advocates.

8. (1) No person shall be entitled as of right to practise in any High Court, unless his name is entered in the roll of the advocates of the High Court maintained under this Act :

Provided that nothing in this sub-section shall apply to any attorney of the High Court.

(2) The High Court shall prepare and maintain a roll of advocates of the High Court in which shall be entered the names of—

(*a*) all persons who were, as advocates, vakils or pleaders, entitled as of right to practise in the High Court immediately before the date on which this section comes into force in respect thereof ; and

(*b*) all other persons who have been admitted to be advocates of the High Court under this Act :

[illegible] in respect of enrolment the stamp- [illegible] Act, 1899* and a fee, payable to [illegible] he case of the person referred to in clause (a), and in other cases such amount as may be prescribed.

(3)† Entries in the roll shall be made in the order of seniority, and such seniority shall be determined as follows, namely :—

(*a*) all such persons as are referred to in clause (*a*) of sub-section (2) shall be entered first in the order in which they were respectively entitled to seniority *inter se* immediately before the date on which this section comes into force in respect of the High Court ; and

(*b*) the seniority of any other person admitted to be an advocate of the High Court under this Act after that date shall be determined by the date of

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* II of 1899. † Substituted by Act 13 of 1927.

his admission or, if he is a barrister, by the date of his admission or the date on which he was called to the Bar, whichever date is earlier :

Provided that, for the purposes of clause (*b*) the seniority of a person who before his admission to be an advocate was entitled as of right to practise in another High Court shall be determined by the date on which he became so entitled.

(4) the respective rights of pre audience of advocates of the High Court shall be determined by seniority :

Provided that the Advocate-General shall have pre-audience over all other advocates, and King's council shall have pre-audience over all advocates except the Advocate-General.]

*(5) The High Court shall issue a certificate of enrolment to every person enrolled under this section.

*(6) The High Court shall send to the Bar Council a copy of the roll as prepared under this section, and shall thereafter communicate to the Bar Council all alterations in, and additions to, the roll as soon as the name have been made.

*(7) The Bar Council shall enter in the copy of the roll all alterations and additions so communicated to it

Practise.—A person appearing, pleading or acting on his own behalf or by his recognised agent cannot be said to practise

Clause (2)—In accordance with the opinion expressed by several High Courts, the preparation and maintenance of the roll of advocates is entrusted to the High Court instead of to the Bar Council Provision has also been made for the maintenance of the roll by the High Court and for the maintenance of a copy of it by the Bar Council, principally in order that the election roll of persons entitled to elect members to the Bar Council may be kept up to-date In order to enable this to be done the duty of furnishing a copy of the roll to the Bar Council and of communicating to it all alterations and additions as they are made is imposed upon the High Court —*Report of the Select Committee.*

Qualification and admission of advocates.

previous sanction of the High Court, make rules to regulate the admission of persons to be advocates of the High Court :

Provided that such rules shall not limit or in any way affect the power of the

of the foregoing

:—

(*a*) the qualifications to be possessed by persons applying for admission as advocates ;

(*b*) the form and manner in which applications shall be made to the High Court for admission ;

(*c*) the giving of notice by the High Court to the Bar Council of all such applications ;

(*d*) the hearing by the High Court of any objection preferred on behalf of the Bar Council to the admission of any applicant ; and

(*e*) the charging of fees payable to the Bar Council in respect of enrolment.

(3) Rules made under this section shall provide that no woman shall be disqualified for admission to be an advocate by reason only of her sex.

(4) Nothing in this section or in any other provision of this Act shall be deemed to limit or in any way affect the powers of the High Courts of Judicature at Fort William in Bengal and at Bombay to prescribe the qualifications to be possessed by persons applying to practise in those High Courts respectively

* Renumbered by Act 13 of 1927.

in the exercise of their original jurisdiction or the powers of those High Courts to grant or refuse, as they think fit, any such application "or to prescribe the conditions under which such persons shall be entitled to practise or plead "*

Clause (1).—Power is given to the Bar Councils to make rules for admission of person as advocates of the High Court. But previous sanction must be obtained of the High Court before making such rules Bar Council should treat applications for admission as advocate on its merits. Bar Council must be convinced that certain member of the profession does not deserve to be enrolled as advocate before refusing admission. 124 Ind. Cas. 654=A. I. R. 1930 Oudh 121. Diploma or certificate for having taken degree should be attached with application. A I. R. 1935 Sind. 196. Before application is made receipt of payment of fees is necessary. A. I. R. 1935 Sind 180 (F. B).

Proviso—But the High Court has the power to refuse admission to any person otherwise qualified if it considers that he would be on other grounds an undersirable addition to the Bar.—*Report of the Select Committee*

Clause (2).—This clause lays down the matters, respecting which rules may be made.

Clause (3)—In the case of *Miss Regina Guha*, 21 C. W. N. 74 (F. B.)=24. C. L. J 382, a Full Bench of the Calcutta High Court held that a woman was not entitled to practise as a pleader This disability was, however, taken away by Act 23 of 1923. This clause lays down the law as stated in Act 23 of 1923.

Clause (4).—"We have added a new sub-clause (4) to this clause to meet a criticism advanced by the High Court of Judicature at Bombay that under the Bill as introduced, the powers of the High Court in respect of admissions to the Original Side were not sufficiently defined. The new sub-clause is intended to make it clear that the powers of the High Courts at Calcutta and Bombay to regulate absolutely the qualifications for admission to practise on the original side will remain unimpaired."—*Report of the Select Committee.* Rule 10 of the Appellate Side Rules of the Bombay High Court is not *ultra vires* Advocates on the Appellate Side did not come within the definition of pleader as defined in s 4 of the Cr. Pro. Code. 58 B 456=36 Bom L R 1=A I. R. 1934 Bom. 70 (F. B).

Miscon luct.

Punishment of advocate for misconduct.

10. (1) The High Court may, in the manner hereinafter provided, reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional or other misconduct.

(2) Upon receipt of a complaint made to it by any Court or by the Bar Council or by any other person that any such advocate has been guilty of misconduct, the High Court shall, if it does not summarily reject the complaint, refer the case for inquiry either to the Bar Council or, after consultation with the Bar Council, to the Court of a District Judge (hereinafter referred to as a District Court) and may of its own motion so refer any case in which it has otherwise reason to believe that any such advocate has been so guilty.

Professional or other misconduct—"It has been pointed out tht the expression 'unprofessional' conduct does not cover the whole range of cases in which it may be necessary to take disciplinary action against advocates, and we have made some drafting alterations in this clause to meet this point".—*Report of the Select Com-* [illegible] r misconduct, *vide* ss. 12 and 13 of the Legal [illegible] and notes thereunder See also 131 Ind Cas. [illegible] s 214. Advocate's conduct as a party is not [illegible] L. J 773=A. I. R 1932 All. 492 (S B) As [illegible] vide *Ibid* In case of striking off advocates' name from roll of advocates for misconduct, the test is to see whether such misconduct makes the advocate unworthy to remain member of honourable profession and unfit to be entrusted with responsible work of advocate. When an advocate was

* Inserted by Act 13 of 1927.

setting up false defence, it was
1934 Rang. 33. Definite
appearance for other party
tion of an advocate for a
. 1136 (F B); A. I. R.
Court to impose penalties
for misconduct, unconnected with the exercise of the profession, which is either not punishable or has been or can be punished under the law of the land. *Ibid.*

Clause (2)—"Some misunderstanding appears to have arisen as to the object of providing for a reference of cases of misconduct to subordinate courts. Such a
Bar Council will not in all cases be in a
ters which have occurred in the mofussil.
etween Subordinate Courts and Bar Council
Court, but we have provided that the High
Council in any case before referring it to
such a Court; and we have further provided that Courts to which reference may be made shall be the Courts of District Judges" —*Report of the Select Committee.* As regards when Court is entitled to dismiss petition summarily, *vide* 34 Bom. L R. 443= A. I. R. 1932 Bom 199=138 Ind Cas 593 As regards correct procedure under this section, *vide* A I R. 1931 Oudh. 161 (F. B)=8 O W. N. 267=32 Cr. L. J. 625; A. I. R 1931 All 580 (S. B)=1931. A L J. 678. High Court generally accepts finding of Bar Council but it is not bound to do so. A I. R. 1935 All. 425 (S. B).

11. (1) Where any case is referred for inquiry to the Bar Council under section 10, the case shall be inquired into by a Committee of the Bar Council (hereinafter referred to as the Tribunal).

Tribunal of Bar Council.

(2) The Tribunal shall consist of not less than three and not more than five members of the Bar Council appointed for the purpose of the inquiry by the Chief Justice or Chief Judge of the High Court, and one of the members so appointed shall be appointed to be the president of the Tribunal.

Tribunal.—By this section the Chief Justice of the High Court or the Chief Judge of the High Court is empowered to appoint members of the Tribunal from amongst the members of the Bar Council Such Tribunal must not consist of more than 5 members and less then 3 members. All enquiries to be made under section 10 are to be referred to such Tribunals. The President of the Tribunal shall also be appointed by the Bar Council Under section 12, sub section (3) the Advocate-General must be given an opportunity of being heard before orders are passed by the High Court against an advocate. So it is submitted that the Advocate-General should not be appointed a member of the Tribunal by the Court, although he is the *ex-officio* President of the Bar Council.

Powers of English Bar Councils—The Inns of Courts are voluntary Societies, and the decisions of the benchers with regard to the disbenching and disbarring their members are final and conclusive, subject only to an appeal to the Lord Chancellor and the Judges as Visitors. *Manisty* v. *Kenealy*, 24 W. R 918; see also *Neate* v. *Denman*, 43 L. J.Ch 409.

12. (1) The High Court shall make rules to prescribe the procedure to be followed by Tribunals and by District Courts, respectively, in the conduct of inquiries referred under section 10.

Procedure in inquiries.

(2) The finding of a Tribunal on an inquiry referred to the Bar Council under section 10 shall be forwarded to the High Court through the Bar Council, and the finding of a District Court on such an inquiry shall be forwarded direct to the High Court which shall cause a copy thereof to be sent to the Bar Council.

Court shall fix a date for the hearing
so fixed to be given to the advocate
Advocate-General, and shall afford
the advocate concerned and the Bar Council and the Advocate-General an opportunity of being heard before orders are passed in the case.

(4) The High Court may thereafter either pass such final orders in the case as it thinks fit or refer it back for further inquiry to the Tribunal through the Bar Council or to the District Court, as the case may be, and, upon receipt of the finding after such further inquiry, deal with the case in the manner provided in sub section (3) and pass final orders thereon.

(5) In passing final orders the High Court may pass such order as regards the payment of the costs of the inquiry and of the hearing in the High Court as it thinks fit.

(6) The High Court may, of its own motion or on application made to it in this behalf, review any order passed under sub section (4) or sub-section (5) and maintain, vary or rescind the same, as it thinks fit.

(7) When any advocate is reprimanded or suspended under this Act, a record of the punishment shall be entered against his name in the roll of advocates of the High Court, and when an advocate is removed from practice his name shall forthwith be struck off the roll; and the certificate of any advocate so suspended or removed shall be recalled.

Notes.—"The alterations which we have made in this clause provide, firstly that the Advocate-General shall have notice of, and shall be entitled to appear at the hearing of, every case before the High Court whether the inquiry has been made by a Tribunal of the Bar Council or by a District Court, and, secondly, that the High Court shall have the power to review its orders. This power will enable it to accept a belated apology, if it thinks fit, and remit or reduce the punishment."—*Report of the Select Committee* It is submitted that the position of the Advocate General is very [illegible] he Bar Council and under [illegible] Advocate is expected to [illegible] nt on oath than ordinary [illegible] ules framed under the Act empowers the High Court to assess the cost directed to be paid to the Advocate by the complainant. 35 C. W. N. 293 Where the tribunal constituted under s. 11 of the Act has made a careful and reliable investigation the High Court will not [illegible] he finding of fact which have [illegible] I. Cas 1270. Sub-section (3) [illegible] any person other than the [illegible] the finding of a Tribunal, the High Cout has power to hear the complainant. *Ibid.* Under section 12 the correct procedure is for the Advocate-General to open by submitting the report of the tribunal to the Court then the advocate concerned is entitled to be heard and then if necessary the Advocate-General will reply. 33 Bom L R 1215. Where the members of the Tribunal of the Bar Council differ, High Court can consider reports both of the majority and minority. A bench of 3 Judges can hear such enquiries. 54 M. 857=134 Ind. Cas. 33 The power of review conferred upon High Courts under sub-section (6) of s. 12, Bar Councils Act cannot be extended to an order passed under s. 41 of the Legal Practitioners Act 11 O W. N. 368=A. I. R. 1934 Oudh. 140 (S. B.) When the report of the tribunal is ambiguous and does not contain explicit findings report need not be sent back, if after investigation Court is not in doubt as to order that ought to be passed. A I R. 1933. Rang. 10. The Court's decision must not rest on suspicions. A. I. R. 1934 Oudh. 58 (F B.)=147 Ind. Cas. 1080=11 O. W. N. 23. In order to prevent counsel appearing for the other party he must have a definite retainer, with a fee paid, or he must have such confidential communications from him as it would make it improper for the other party. 11 O W. N. 23.

Powers of the Tribunal and Courts in inquiries

13. (1) For the purposes of any such inquiry as aforesaid, a Tribunal or a District Court shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908,* in respect of the following matters, namely :—

(*a*) enforcing the attendance of any person and examining him upon oath,

(*b*) compelling the production of documdnts, and

(*c*) issuing commissions for the examination of witnesses :

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* V of 1908

Provided that the Tribunal shall not have power to require the attendance of the presiding officer of any Court save with the previous sanction of the High Court or, in the case of an officer of a Criminal or Revenue Court, of the Local Government.

(2) Every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code ; *and a Tribunal shall be deemed to be a Civil Court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898.†

(3) For the purpose of enforcing the attendance of any person and examining him upon oath or of compelling the production of documents or of issuing commissions—

(a) the local limits of the jurisdiction of a Tribunal shall be those of the [illegible] which the Tribunal has been constituted; and

[illegible] any Civil Court having jurisdiction in the [illegible] any summons or other process for the attendance of a witness or the production of a document required by the Tribunal, or any commission which it desires to issue, and the Civil Court shall serve [illegible], as the case may be, and may enforce any [illegible] attendance or production before itself.

[illegible] or a District Court in any such inquiry [illegible]s for the purposes of section 132 of the [illegible]he provisions of that section shall apply accordingly.

Clause (1)—By this clause the Tribunal is invested with the powers of Civil Court so far as enforcing the attendance of any person and examining him upon oath, compelling the production of documents and issuing commissions for the examination of witnesses are concerned The English Inns of Court which are voluntary societies do not possess these powers They can disbar a member and [illegible]istence *Hudson* v. *Slade*, 3 F. & F. [illegible] effect to a suggestion made by the Tribunal should not have unrestricted [illegible]l officers, a power which might result [illegible]nvenience to the public. This proviso [illegible] sanction of the High Court or of the [illegible] the presiding

[illegible] practitioners [illegible]ncils Act now [illegible] 225

Miscellaneous.

Right of advocates to practise

14 (1) An advocate shall be entitled as of right to practise—

(a) subject to the provisions of sub section (4) of section 9, in the High Court of which he is an advocate, and

(b) save as otherwise provided by sub-section (2) or by or under any other law for the time being in force in any other Court in British India and before any other Tribunal or person legally authorised to take evidence, and

(c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise

(2) Where rules have been made by any High Court within the meaning of [illegible]ct, 1897,§ or in the case of a [illegible]n constituted under this Act, [illegible] the conditions subject to which [illegible] to practise in the High Court,

* XLV of 1860
‡ I of 1872.
† V of 1898.
§ X of 1897.

such advocates shall not be entitled to practise therein otherwise than subject to such conditions.

(3) Nothing in this section shall be deemed to limit or in any way affect the power of the High Court of Judicature at Fort William in Bengal or of the High Court of Judicature at Bombay to make rules determining the persons who shall be entitled respectively to plead and to act in the High Court in the exercise of its original jurisdiction.

Practice—It includes the right to appear, plead and act. *Laureatina* v. *Dhuki*, (1925) Pat. 765 An ex-judge of High Court if entered in the roll of advocates has a right to appear in the courts of the province. 35 C. W. N. 321 P. C.=A. I R. 1931 P. C 22=12 P. L T. 169.

Any other Court in British India—"We think the provisions of the Bill as introduced were somewhat too stringent in refusing to allow an advocate of one High Court to appear before another unless rules had been made by the latter Court or by the Bar Council, where such exists, regulating the conditions of such appearances. We think it reasonable to give advocates the right of appearing in other High Courts unconditionally unless conditions are imposed by such rules, and we have redrafted the clause accordingly"—*Report of the Select Committee.*

Sub Clause (e)—"We have also made an addition to sub-clause (1) to provide for certain cases which have been brought to our notice in which legal practitioners are at present entitled to appear before certain public officers or bodies not legally authorised to take evidence."—*Report of the Select Committee*

General power of Bar Councils to make rules.

15. A Bar Council may, with the previous sanction of the High Court for which it is constituted, make rules consistent with this Act to provide for and regulate any of the following matters, namely :—

(*a*) the rights and duties of the advocates of the High Court and their discipline and professional conduct ;

(*b*) the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court ;

(*c*) the giving of facilities for legal education and training and the holding and conduct of examinations by the Bar Council ;

(*d*) the charging of fees payable to the Bar Council in respect of the enjoyment of educational facilities provided, or of the right to appear at examinations held, by the Bar Council ;

(*e*) the investment and management of the funds of the Bar Council ; and

(*f*) any other matter in respect of which the High Court may require rules to be made under this section.

Scope—This section makes provision for the rights and duties of the advocates of the High Court and their discipline and professional conduct the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court as well as the giving of facilities for legal education and training and the holding and conduct of examinations by the Bar Council. The Bar Council may also charge fees for the educational facilities provided for the students as well as fees for appearing at the examination, held by the Bar Council Effect has also been given in clause (e) to a suggestion that provision should be made for rules to regulate the investment and general management of the funds of the Bar Council. Clause (f) has been added so that rules may be made in respect of other matters which experience may reveal as requiring regulation. *Vide Report of the Select Committee.*

Power to fix fees payable as costs

16. The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto

Notes—Under this section the High Court to make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the

fees of his adversary's advocate. This section makes no mention whether reference to be made to the Bar Council or not.

Payment of Fees to Party's own legal advisers—Before the passing of the Legal Practitioners (Fees) Act, 1926, an agreement by a client to pay a certain amount to his pleader as fees for professional service can not be enforced by the latter when it has not been embodied in writing signed by the client and filed in the proper Court in the manner provided by section 28 of the Legal Practitioners' Act, even when the amount agreed to be paid is not in excess of that prescribed under the Rules framed under section 27 of the Act for payment by a party to his opponent in respect of fees of the pleader employed by his adversary *Srimati Kamini Devi* v *Khetre Mohan Ganguli*, 15 C. W N. 45=13 Ind. Cas. 43=15 C. L. J 660; see also *Julian* v. *Cowasjee*, 33 Ind. Cas. 107; *Rajah* v. *D. V. Narasimarao*, 29 Ind. Cas 763. But now see Act 21 of 1926

17. No suit or other legal proceeding shall lie against a Bar Council or any Committee, Tribunal or member of a Bar Council for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule made thereunder.

Indemnity against legal proceedings

Notes—"We have inserted this clause in the usual form to provide indemnity for *bona fide* action taken by Bar Councils and Committees, Tribunals and members of Bar Councils."—*Report of the Select Committee.*

Liability of individual members Corporati[illegible] answer- [illegible] at least [illegible] *Wadham* College, 1 East, 500 (a) All suits must be in the corporate name of the corporation and not in the name of any members or the Chairman or President. *Santon* v. *The Chairman*, A W. N 1908, 165; *Syed Ameer Sahib* v *Venkataran a*, 16 M. 296.

18. All rules made under this Act shall be published in the local official Gazette of the province, or of each province, as the case may be, in which the High Court by which or with whose sanction the rules are made exercises jurisdiction.

Publication of rules.

Notes—This section makes provision for the publication of Rules. These rules are to be published in the local official Gazette or Gazettes of the province or the provinces over which the High Court exercises jurisdiction. The rules of the Bar Council of Calcutta under this section are to be published in the Calcutta as well as in the Assam Gazettes. But publication of rules in local official Gazette is not condition precedent of their coming into force. A. I R. 1935 All. 295.

19. (1) When sections 8 to 16 come into force in respect of any High Court, any enactment mentioned in the first column of the Schedule which is in force in any province in which the High Court exercises jurisdiction shall, for the purpose of its application to that province, be amended to the extent and in the manner specified in the second column of the Schedule.

Amendment of enactments, etc.

(2) When sections 8 to 16 come into force in respect of any High Court of Judicature established by Letters Patent, this Act shall have effect in respect of such Court notwithstanding anything contained in such Letters Patent, and such Letters Patent shall, in so far as they are inconsistent with this Act or any rules made thereunder, be deemed to have been repealed.

(3) When sections 8 to 16 come into force in respect of the High Court of Judicature at Bombay, the Bombay Pleaders' Act, 1920* except section 7 thereof, shall cease to apply to or in respect of any person enrolled as an advocate of the High Court under this Act, and nothing in that Act shall be deemed to authorise the admission or enrolment of any person as a vakil or pleader of the High Court.

(4) When this Act has come into force in respect of any High Court, any provision of any other enactment or any order, scheme, rule, form or bye-law

* Bom. Act XVII of 1920.

made thereunder, which was before that date applicable to advocates, vakils or pleaders entitled to practise in such High Court shall, unless such a construction is repugnant to the context or to any provision made by or under this Act, be construed as applying to advocates of the High Court enrolled under this Act.

Notes —The amendments mentioned in the Schedule will be effected in any Province when sections 8 to 16 will come into force in that Province.

THE SCHEDULE.

(*See section 19.*)

AMENDMENT OF ENACTMENTS.

Enactment amended.	Extent and manner of amendment.
The Legal Practitioners' Act, 1879.	(1) In section 4, after the words "with the permission of the Court" the words and figures "or, in the case of a High Court in respect of which the Indian Bar Councils Act, 1926, is in force, subject to rules made under that Act" shall be inserted. (2) [illegible] the words "Royal Charter" the [illegible] h the Indian Bar Councils Act, [illegible] (3) [illegible] and figures shall be added, namely :— "and except as provided by section 36, nothing in this Act applies to persons enrolled as advocates of any High Court under the Indian Bar Councils Act, 1926." (4) in section 41, sub-section (1) after the words "Royal Charter" the *words and figures "in respect of which the Indian Bar Councils Act,* 1926, is not in force" shall be inserted.
The Indian Stamp Act, 1899.	In Article 30 of the First Schedule after the words "High Court" where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.
The Madras Stamp (Amendment) Act, 1922.	In Article 25 of Schedule 1A, after the words "High Court" where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted
The Bengal Stamp (Amendment) Act, 1922	In Article 30 of Schedule 1A, after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.
The Indian Stamp Punjab (Amendment) Act, 1922.	In Article, 30 of Schedule 1A, after the words "High Court" where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted
The Assam Stamp (Amendment) Act, 1922	In Article 30 of Schedule 1A, after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act 1926, or" shall be inserted.

THE INDIAN BILLS OF LADING ACT, 1856.

ACT NO. IX OF 1856.

RECEIVED THE G. G.'S ASSENT ON THE 11TH APRIL, 1856.

An Act to amend the Law relating to Bills of Lading.

Preamble.

WHEREAS by the custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper, or owner, and it is expedient that such rights should pass with the property; and whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bona-fide* holder for value should not be questioned by the master or other person signing the same, on the ground of the goods not having been laden as aforesaid; It is enacted as follows:—

Passed to the endorsee—The endorsement and delivery by the consignee of a bill of lading for valuable consideration to a person not proved to have taken it *malafide*, transfers to the endorsee according to the intention of the transaction the right and property of the consignee in the goods, freed from any right of the consignor, to stop the goods *in transitu* *Lickbarrow* v. *Mason*, 5 T. R. 683; 6 East 20.

Application—This Act has been declared to be in force throughout British India except as regards the Scheduled Districts.

Rights under bills of lading to vest in consignee or endorsee.

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Notes.—The bill of lading remains in force, so long as complete delivery of possession of the goods has not [illegible] to claim them under it, *Barber* v. *Meyertein* [illegible] v. *The East and West India Dock Compan*[illegible] ms the goods under that Bill of Lading, [illegible] A. I. R. 1928 B. 5.

Not to affect right of stoppage or *in transitu* claims for freight

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence *of such consignment* or endorsement.

Notes—"There were numerous decisions both in England and America, to the [illegible] ndee, under bills of [illegible] r to stop the goods [illegible] of lading, who took [illegible] business, before the [illegible] 21 Am. Rep. 718 T.; [illegible]

3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board ;

Bill of lading in hands of consignee, etc, conclusive evidence of the shipment as against master, etc.

Provided that the master or other person so signing may exonerate himself, in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder or some person under whom the holder claims.

Proviso.

Notes —This section of the Bills of Lading Act is limited to the master or the persons signing the bills. In the absence of any proof that the bills of lading were granting under a misrepresentation without any default on the part of the person signing them, and wholly due to the fault of the shipper or the holder of such bills of lading, the particular marks as shown in the respective bills of lading must be held to have been put on the board. *Pohunal* v. *The Karachi Port Trust*, 18 S. L. R. 106= A. I. R. 1925 Sind. 221.

THE BIRTHS, DEATHS, AND MARRIAGES REGISTRATION ACT, 1886.

ACT VI OF 1886.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH MARCH 1886.

An Act to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

WHEREAS it is expedient to provide for the voluntary registration of births and deaths among certain classes of persons, for the more effectual registration of those births and deaths and of the marriages registered under Act III of 1872* or the Indian Christian Marriage Act, 1872 * and of certain marriages registered under the Parsi Marriage and Divorce Act, 1865,† and for the establishment of general registry offices for keeping registers of those births, deaths, and marriages ;

And whereas it is also expedient to provide for the authentication and custody of certain existing registers made otherwise than in the performance of a duty specially enjoined by the law of the country in which the registers were kept, and to declare that copies of the entries in those registers shall be admissible in evidence ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Births, Deaths and Marriages Registration, Act, 1886 ; and

Short title and commencement.

[illegible] the Governor-General in Council, by [illegible]

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* XV of 1872.

† XV of 1865.

Local extent.

2. This Act extends to the whole of British India, and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

"sign" includes mark, when the person making the mark is unable to write his name:

"prescribed" means prescribed by a rule made by the Governor-General in Council under this Act: and

"Registrar of Births and Deaths" means a Registrar of Births and Deaths appointed under this Act.

Saving of local laws.

4. Nothing in this Act, or in any rule made under this Act, shall affect any law heretofore or hereafter passed providing for the registration of births and deaths within particular local areas.

Powers exercisable from time to time.

5. All powers conferred by this Act may be exercised from time to time as occasion requires.

CHAPTER II.

General Registry Offices of Births, Deaths and Marriages.

Establishment of general registry officers and appointment of Registrars-General.

6. (1) Each Local Government—

(*a*) shall establish a general registry office for keeping such certified copies of registers of births and deaths registered under this Act, or marriages registered under Act III of 1872 (*to provide a form of marriage in certain cases*) or the [illegible] cal limits of the ordinary [illegible] e at Bombay, under the [illegible] to it under this Act or under any [illegible] this Act; and

(*b*) may a [illegible] to be called the Regis trar-General [illegible] erritories under its administration:

(2) Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor-General in Council, establish two general registry offices, and appoint two Registrars-General of Births, Deaths and Marriages for the territories under his administration; one of such general registry offices, and of such Registrars General, being established and appointed for Sindh, and the other for the other territories under the administration of the Governor of Bombay in Council.

Indexes to be kept at general registry office.

7. Each Registrar-General of Births, Deaths and Marriages, shall cause [illegible] sent [illegible] III, of [illegible] 2* or the Parsi Marriage and Divorce [illegible] to be made and kept in his office in the prescribed form.

Indexes to be open to inspec-

8. Subject to the payment of the prescribed fees, the indexes so made shall be, at all reasonable times open to inspection by [illegible]

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* XV of 1872.

† XV of 1865.

Copies of entries to be admissible in evidence.

9. A copy of an entry given under the last foregoing section shall be certi- [illegible] eaths [illegible] this [illegible] e ad- missible in evidence for the purpose of proving the birth, death, or marriage to which the entry relates.

Superintendence of Registrars by Registrar-General.

10. Each Registrar-General of Births, Deaths and Marriages, shall exercise a general superintendence over the Registrars of Births and Deaths in the territories for which he is appointed.

CHAPTER III.

Registratoin of Births and Deaths.

A.—Application of this Chapter.

Persons whose births and deaths are registrable.

11. (1) The persons whose births and deaths shall, in the first instance, be registrable under this Chapter, are the following, namely :—

(a) in British India, the members of every race, sect, or tribe to which the Indian Succession Act, 1865,* applies, and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion ;

(b) in the dominions of Princes and States in India in alliance with Her Majesty, British subjects being members of a like race, sect, or tribe or professing the Christian religion :

(2) But the Local Government, by notification in the official Gazettee, may with the previous approval of the Governor General in Council, extend the operation of this Chapter to any other class of persons either generally or in any local area.

B.—Registration Establishment.

Power for Local-Government to appoint Registrars for its territories

12. The Local Government may appoint, either by name or by virtue of their office, so many persons as it thinks necessary to be Registrars of Births and Deaths for such local areas within the territories under its administration as it may define, and, if it sees fit, for any class of persons within any part of those territories

Power for Governor-General in Council to appoint Registrars for Native States.

13. The Governor General in Council may, by notification in the *Gazette of India*, appoint, either by name or by virtue of their office, so many persons as he thinks necessary to be Registrars of Births and Deaths for such local areas within the dominions of any Prince or State in India in alliance with Her Majesty as he may define, and, if he sees fit, for any class of persons within any part of those dominions

† "Provided that the powers and functions exercisable by the Governor-General in Council under this section shall, in the case of any such dominions which are within the political charge of a Local Government, be exercised by that Local Government by notification in the Local official Gazette."

Registrar to be deemed a public servant

14. Every Registrar of Births and Deaths shall be deemed to be a public servant within the meaning of the Indian Penal Code ‡

Power to remove Registrars

15. (1) The Local Government or the Governor General in Council, as the case may be, may suspend, remove or dismiss any Registrar of Births and Deaths.

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* X of 1865, now Act XXXIX of 1925.

† This proviso was added to section 13 by Act 38 of 1920.

‡ XLV of 1860

(2) A Registrar of Births and Deaths may resign by notifying in writing to the Local Government or to the Governor-General in Council, as the case may be, his intention to do so, and, on his resignation being accepted by the Local Government or the Governor General in Council, he shall be deemed to have vacated his office.

Office and attendance of Registrar.

16. (1) Every Registrar of Births and Deaths shall have an office in the local area, or within the part of the territories or dominions, for which he is appointed.

(2) Every Registrar of Births and Deaths, to whom the Local Government may direct this sub section to apply, shall attend at his office for the purpose of

the addition of Registrar of Births and Deaths for the local area or class for which he is appointed, and the days and hours of his attendence.

Absence of Registrar or vacancy in his office.

17. (1) When any Registrar of Births and Deaths to whom the Local Government may direct this section to apply, not being a Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, or such other officer as the Local Government appoints in this behalf, shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(2) When any such Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent or when his office is temporarily ... irths, Deaths, and Marria- ... Births and Deaths during ... vacancy.

(3) The Registrar General of Births, Deaths and Marriages shall report to the Local Government all appointments made by him under this section.

Register-books to be supplied, and preservation of records to be provided for.

18. The Local Government shall supply every Registrar of Births and Deaths with a sufficient number of register-books of birth and of register-books of deaths, and shall make suitable provision for the preservation of the records connected with the registration of births and deaths.

C.—*Mode of Registration.*

Duty of Registrar to register births and deaths of which notice is given.

19. Every Registrar of Births and Deaths, on receipt of notice of birth or ... ng the class ... the notice is ... d in the pres- ... by this Act to give the notice, forthwith ma ... n the proper register-book:

Provided that—

(*a*) If he has reason to believe the notice to be in any respect false, he may refuse to register the birth or death until he receives an order from the Judge of the District Court directing him to make the entry and prescribing the manner in which the entry is to be made; and

(*b*) he shall not enter in the register the name of any person as father of an illegitimate child, unless at the request of the mother and of the person acknowledging himself to be the father of the child.

Persons authorized to give notice of birth.

20. Any of the following persons may give notice of a birth, namely :—

(*a*) the father or mother of the child ;

(*b*) any person present at the birth ;

(*c*) any person occupying, at the time of the birth, any part of the house wherein the child was born, and having knowledge of the child having been born in the house ;

(*d*) any medical practitioner in attendance after the birth and having personal knowledge of the birth having occurred ;

(*e*) any person having charge of the child.

Persons authorized to give notice of death.

21. Any of the following persons may give notice of a death, namely :—

(*a*) any relative of the deceased having knowledge of any of the particulars required to be registered concerning the death ;

(*b*) any person present at the death ;

(*c*) any person occupying, at the time of the death, any part of the house wherein the death occurred, and having knowledge of the deceased having died in the house ;

(*d*) any person in attendance during the last illness of the deceased ;

(*e*) any person who has seen the body of the deceased after death.

Entry of birth or death to be signed by person giving notice.

22. (1) When an entry of a birth or death has been made by the Registrar of Births and Deaths under section 19, the person giving notice of the birth or death must sign the entry in the register in the presence of the Registrar

"Provided that it shall not be necessary for the person giving notice to attend before the Registrar or to sign the entry in the register if he has given such notice in writing, and has furnished to the satisfaction of the Registrar such evidence of his indentity as may be required by any rules made by the Local Government in this behalf."*

(2) Until the entry has been so signed, "or the conditions specified in the proviso to sub section (1) have been complied with" the birth or death shall not be deemed to be registered under this Act.

(3) When the birth of an illegitimate child is registered, and the mother and the person acknowledging himself to be the father of the child jointly request that that person may be registered as the father, the mother and that person must both sign the entry in the register in the presence of the Registrar.

Grant of certificate of registration of birth or death.

23. The Registrar of Births and Deaths shall, on application made at the time of registering any birth or death by the person giving notice of the birth or death, and on payment by him of the prescribed fee, give to the applicant a certificate in the prescribed form, signed by the Registrar, of having registered the birth or death.

Duty of Registrars as to sending certified copies of entries in register-books to Registrar General.

24. (1) Every Registrar of Births and Deaths in British India shall send to the Registrar General of Births, Deaths and Marriages for the territories within which the local area or class for which he is appointed is situate or resides, at the prescribed intervals, a true copy certified by him, in the prescribed

* The words within quotations have been added by Act IX. of 1911.

form, of all the entries of births and deaths in the register-book kept by him since the last of those intervals ;

Provided that in the case af Registrars of Births and Deaths who are clergymen of the Churches of England, Rome and Scotland the Registrar may, if so directed by his ecclesiastical superior, send the certified copies in the first instance to that superior, who shall send them to the proper Registrar General of Births, Deaths and Marriages.

In this sub section "Church of England" and "Church of Scotland" mean the Church of England and the Church of Scotland as by law established respectively ; and "Church of Rome" means the Church which regards the Pope of Rome as its spiritual head.

[illegible] to every Registrar of Births [illegible] ate in India in alliance with [illegible] ied copies referred to in that [illegible] General of Births, Deaths [illegible] notification in the *Gazette*

[illegible] the case of any such domi- [illegible] charge of a Local Government, be sent to [illegible] aths and Marriages for the territories under [illegible] vernment"

25. (1) Every Registrar of Births and Deaths shall, on payment of the prescribed fees, at all reasonable times, allow searches to be made in the register-books kept by him, and give a copy of any entry in the same.

Searches and copies of entries in register-books.

(2) Every copy of an entry in a register-book given under this section shall be certified by the Registrar of Births and Deaths and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates,

26. Notwithstanding anything in section 19, the "Local-Government"† may make rules authorizing Registrars of Births and Deaths, on conditions and in circumstances to be specified in the rules, to register births and deaths occurring outside the local areas or classes for which they are appointed.

Exceptional provision for registration of certain births and deaths.

D.—Penalty for False Information.

27. If any person wilfully makes, or causes to be made for the purpose of being inserted in any register of births or deaths, any false statement in connection with any notice of a birth or death under this Act, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Penalty for wilfully giving false information.

E.—Correction of Errors.

28. (1) If it is proved to the satisfaction of a Registrar of Births and Deaths that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance he may, subject to such rules as may be made by the Local Government with respect to the conditions and circumstances on and in which errors may be corrected, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction.

Correction of entry in register of births or deaths.

* This proviso has been added by Act 38 of 1920

† The words within quotations have been substituted by Act 9 of 1911.

(2) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made.

CHAPTER IV.

Amendment Of Marriage Acts.

Addition of new section after section 13, Act III of 1872.

29. After section 13 of Act III of 1872 (*to provide a form of marriage in certain cases*) the following section shall be inserted, namely :—

"13A. [*Printed in Special Marriage Act, vide infra*]"

Amendment of the Indian Christian Marriage Act, 1872

30. In the Indian Christian Marriage Act,* 1872,* the following amendments shall be made, namely :—

(*a*) at the end of section 3, the words " 'Registrar General of Births, Deaths, and Marriages' means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886,"† shall be added ;

(*b*) for the words "Secretary to the Local Government," wherever they occur, and for the words "Secretary to a Local Government" in section 79, the words "Registrar General of Births, Deaths and Marriages", shall be substituted ;

(*c*) [*Repealed by Act II of 1891, s. 4* (2)]

(*d*) in section 81, after the words "Registrar General of Births, Deaths and Marriages," the words "in England" shall be added.

Addition of new section after section 8 of the Parsi Marriage and Divorce Act, 1865.

31. After section 8 of the Parsi Marriage and Divorce Act, 1865,‡ the following section shall be inserted, namely :—

"8A. [*Printed in Parsi Marriage and Divorce Act, vide infra.*]"

CHAPTER V.

Special Provisions as to certain existing Registers.

Permission to persons having custody of certain records to send them within one year to Registrar-General.

32. If any person in British India, or in the dominions of any Prince or State in India in alliance with Her Majesty, has for the time being the custody of any register or record of birth, baptism, naming, dedication, death, or burial of any persons of the classes referred to in section 11, sub-section (1), or of any register or record of marriage of any persons of the classes to which Act III of 1872 or the Indian Christian Marriage Act, 1872,* or the Parsi Marriage and Divorce Act, 186 ,‡ applies, and if such register or record has been made otherwise than in performance of a duty specially enjoined by the law of the country in which the register or record was kept, he may, "at any time before the first day of April 1891,"§ send the register or record to the office of the Registrar General of Births, Deaths and Marriages for the territories within which he resides, or, if he resides within the dominions of any such Prince or State as aforesaid, to such one of the Registrars General as aforesaid as the Governor General in Council, by notification in the Gazette of India directs in this behalf.

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* XV of 1872. † VI of 1886. ‡ XV of 1865.

§ In s 32 the words quoted have been substituted for the words "within one year from the date on which this Act comes into force," by Act XVI of 1890, s. 1.

*"Provided that such register or record shall, in the case of any such dominions which are within the political charge of a Local Government, be sent to the Registrar General of Births, Deaths and Marriages for the territories under the administration of that Local Government."

33.† "(1) Any Local Government in the case of registers or records sent under section 32 to the Registrar General for the territories under its administration, and the Governor General in Council, in the case of [illegible] him may

Appointment of Commissioners to examine registers

(2) The Commissioners so appointed shall hold office for such period as the "authority appointing them, "‡ by the order of appointment, or any subsequent order, directs,

34. (1) The Commissioners appointed under the last foregoing section shall enquire into the state, custody and authenticity of every such register or record as may be sent to the Registrar-General of Births, Deaths and Marriages under section 32; and shall deliver to the Registrar General a descriptive list or descriptive lists of all such registers or records, or portions of registers or records, as they find to be accurate and faithful.

Duties of Commissioners.

(2) The list or lists shall contain the prescribed particulars and refer to the registers or records, or to the portions of the registers or records, in the prescribed manner.

(3) The Commissioners shall also certify in writing, upon some part of every separate book or volume containing any such register or record, or portion of a register or record, as is referred to in any list or lists made by the Commissioners, that it is one of the registers or records, or portions of registers or records, referred to in the said list or lists.

35 § (1) Subject to the payment of the prescribed fees, the descriptive list or lists of registers or records, or portions of registers or records, delivered by the Commissioners to the Registrar General of Births, Deaths and Marriages shall be, at all reasonable times, open to inspection by any person applying to inspect it or them, and copies of entries in those registers or records shall be given to all persons applying for them.

Searches of lists prepared by Commissioners and grant of certified copies of entries.

(2) A copy of an entry given under this section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer or person authorized in this behalf by the Local Government, and shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates.

‖35A. ¶"(1) The Governor General in Council or the Local Government if he or it thinks fit, may [illegible] *Gazette of India* [illegible] the case may be, [illegible] one for the purposes of section 33, each such Commission consisting of so many and such members, and having its functions

Constitution of additional Commissions for purposes of this chapter.

* [illegible]
† [illegible]
‡ [illegible]
§ [illegible]
‖ [illegible]
¶ [illegible] 38 of 1920.

restricted to the disposal, under this Act and the rules thereunder, of such registers and records sent under section 32 to the Registrar General, as may be specified in the notification."

"(2) If more Commissions than one are appointed in exercise of the power conferred by sub-section (1), then references in this Act to the Commissioners shall be construed as references to the members constituting a Commission so appointed."*

CHAPTER VI.

RULES.

Rules

†36. "(1) The Local Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) fix the fees payable under this Act;

(*b*) prescribe the forms required for the purposes of this Act;

(*c*) prescribe the time within which, and the mode in which, persons authorized under this Act to give notice of a birth or death to a Registrar of Births and Deaths must give the notice;

(*d*) prescribe the evidence of identity to be furnished to a Registrar of Births and Deaths by persons giving notice of a birth or death in cases where personal attendance before such Registrar is dispensed with;

(*e*) prescribe the registers to be kept and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act, and the intervals at which they are to send to the Registrar General of Births, Deaths and Marriages true copies of the entries of births and deaths in the registers kept by them;

(*f*) prescribe the conditions and circumstances on and in which Registrars of Births and Deaths may correct entries of births and deaths in registers kept by them;

(*g*) prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the registers or records, or portions of registers or records, to which they relate; and

(*h*) prescribe the custody in which those registers or records are to be kept.

(3) Every power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication.

(4) All rules made under this Act shall be published in the local official Gazette and on such publication shall have effect as if enacted in this Act."

Notes.—All rules heretofore made under this Act by the G. G. in Council shall after the commencement of Act 9 of 1911 be deemed to have been made by the Local Government.—*Vide* s. 6 of Act 9 of 1911.

37. [*Procedure for making and publication of rules*]—*Rep. by s. 5 of Act 9 of 1911.*

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* Sub-section (2) was originally added by Births, Deaths and Marriages Registration Act, Amendment Act, 1890, s. 2. Again it was added by Act 24 of 1934. Perhaps it is due to oversight of the framers of the Act.

† Section 36 has been substituted by Act 9 of 1911.

THE BRONZE COIN (LEGAL TENDER) ACT, 1918.

ACT NO. XXII OF 1918.

PASSED BY THE INDIAN LEGISLATURE.

RECEIVED THE ASSENT OF THE G G ON THE 26TH SEPTEMBER 1918.

An Act to provide that certain bronze coins coined outside British India shall be legal tender in British India.

WHEREAS it is expedient to provide that certain bronze coins coined outside British India shall be legal tender in British India; It is hereby enacted as follows :—

Short title.

1. This Act may be called The Bronze Coin (Legal Tender) Act, 1918.

Power to declare certain bronze coins coined outside British India to be legal tender.

2. (1) Where bronze coins of any of the denominations specified in section 8 of the Indian Coinage Act, 1906,* are coined outside British India at the request of the Governor General in Council, and the Governor General in Council is satisfied that such coins are in accordance with the requirements of section 9 and of any notification for the time being in force under section 10 of the said Act, he may, by notification in the *Gazette of India*, direct the issue of any such coins and thereafter any such coins shall be legal tender in payment or on account in the same way and to the same extent as if they were coins referred to in section 14 of the said Act, and the provisions of the said Act shall apply accordingly.

(2) Every coin which is declared to be legal tender by sub section (1) shall be deemed to be Queen's coin within the meaning of section 230 of the Indian Penal Code.†

THE INDIAN CARRIAGE BY AIR ACT, 1934.

ACT NO. XX OF 1935.

RECEIVED THE ASSENT OF THE G G ON THE 19TH AUGUST 1934.

An Act to give effect in British India to a Convention for the unification of certain rules relating to international Carriage by air.

WHEREAS a Convention for the unification of certain rules relating to international carriage by air (hereinafter referred to as the Convention) was, on the 12th day of October, 1929, signed at Warsaw;

AND WHEREAS it is expedient that British India should accede to the convention and should make provision for giving effect to the said Convention in British India;

AND WHEREAS it is also expedient to make provision for applying the rules contained in the Convention (subject to exceptions, adaptations and modifications) to carriage by air in British India which is not international carriage within the meaning of the Convention; It is hereby enacted as follows :—

Notes—"An International Convention for the unification of certain rules relating to international carriage by air was signed at Warsaw and in October, 1929 by certain Governments. The Convention defines the liability of air carriers for injury or damages caused to passengers or goods. The Convention was not signed on behalf of India, but its provisions have been examined by the Government of India, and in their opinion, suitable to Indian conditions. They, therefore, propose to adhere to

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* III of 1906.

† XLV of 1860.

[illegible] ...enting its provisions has ... The convention applies ... iage between two states signatories to the Convention. but as th ... the general law contract and the law r ... provide power to the Governor Genera ... visions of the Convention also to interr ... *and Reasons.*

Short title, extent and commencement.

1. (1) This Act may be called the Indian Carriage by Air Act, 1934.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

(3) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, appoint

Application of the convention to British India.

2. (1) The rules contained in the First Schedule, being the provisions of the Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in British India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(2) The Governor General in Council may, by notification in the *Gazette of India*, certify who are the High Contracting Parties to the Convention, in respect of what territories they are parties, and to what extent they have availed themselves of the Additional Protocol to the Convention, and any such notification shall be conclusive evidence of the matters certified therein.

(3) Any reference in the First Schedule to the territory of any High Contracting Party to the Convention shall be construed as a reference to all the territories in respect of which he is a party.

(4) Notwithsta[illegible] 1855, or any other e[illegible] the rules contained [illegible] apply, determine the liability of a carrier in respect of the death of a passenger, and the rules contained in the Second Schedule shall determine the persons by whom and for whose benefit and the manner in which such liability may be enforced.

(5) Any sum in francs mentioned in rule 22 of the First Schedule shall, for the purpose any section against a carrier, be converted into rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the Court.

Provisions regarding suits against High Contracting Parties who undertake carriage by air.

3. (1) Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol thereto shall, for the purposes of any suit brought in a Court in British India in accordance with the provisions of rule 28 of the First Schedule to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court and to be a person for the purposes of the Code of Civil Procedure, 1908

(2) The High Court may make rules of procedure providing for all matters which may be expedient to enable such suits to be instituted and carried on.

(3) Nothing in this section shall authorise any Court to attach or sell any property of a High Contracting Party to the Convention

Application of Act to carriage by air which is not international

4. The Governor General in Council may, by notification in the *Gaette of India*, apply the rules contained in the First Schedule and any provision of section 2 to such carriage by air, not being international carriage by air as defined in the First Schedule, as may be

specified in the notification, subject however to such exceptions, adaptations and modifications, if any, as may be so specified.

FIRST SCHEDULE.

(*See section 2.*)

RULES.

CHAPTER I.

SCOPE—DEFINITIONS.

1. (1) These rules apply to all international carriage of persons, luggage or goods performed by aircraft for reward. They apply also to such carriage when performed gratuitously by an air transport undertaking.

(2) In these rules "High Contracting Party" means a High Contracting Party to the *Convention.*

(3) For the purposes of these rules the expression "international carriage" means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to the Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of these rules.

(4) A carriage to be performed by several successive air carriers is deemed, for the purposes of these rules, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international

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CHAPTER II.

DOCUMENTS OF CARRIAGE.

Part I—Passenger ticket.

carrier must deliver a passenger ticket

tion ;

(*c*) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character ;

(*d*) the name and address of the carrier or carriers ;

(*e*) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

(2) The absence, irregularity or loss of the passenger ticket does not affect the existence or the vali[illegible] the less be subject to these rules [illegible] er without a passenger ticket havin[illegible] himself of those provisions of this [illegible]

Part II—Luggage ticket.

4 (1) For the carriage of luggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a luggage ticket.

(2) The luggage ticket shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(3) The luggage ticket shall contain the following particulars :—

(*a*) the place and date of issue ;
(*b*) the place of departure and of destination ;
(*c*) the name and address of the carrier or carriers ;
(*d*) the number of the passenger ticket ;
(*e*) a statement that delivery of the luggage will be made to the bearer of the luggage ticket ;
(*f*) the number and weight of the packages ;
(*g*) the amount of the value declared in accordance with rule 22 (2) ;
(*h*) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

(4) The absence, irregularity or loss of the luggage ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to these rules. Nevertheless, if the carrier accepts luggage without a luggage ticket having been delivered, or if the luggage ticket does not contain the particulars set out at (*d*), (*f*) and (*h*) of sub-rule (3), the carrier shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

Part III.—Air consignment note.

5. (1) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air consignment note" every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of ru[illegible]

6 [illegible] the consignor in three original p[illegible]

(2) [illegible] and shall be signed by the consig[illegible] consignee" ; it shall be signed by the consignor and by the carrier and shall accompany the goods The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

(3) The carrier shall sign an acceptance of the goods.

(4) The signature of the carrier may be stamped ; that of the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out the air consignment note, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

7. The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

8 The air consignment note shall contain the following particulars :—
(*a*) the place and date of its execution ;
(*b*) the place of departure and of destination ;
(*c*) the agreed stopping places, provided that the carrier may preserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character ;
(*d*) the name and address of the consignor ;
(*e*) the name and address of the first carrier ;
(*f*) the name and address of the consignee, if the case so requires ;
(*g*) the nature of the goods ;
(*h*) the number of the packages, the method of packing and the particular marks or numbers upon them ;
(*i*) the weight, the quantity and the volume or dimensions of the goods ;
(*j*) the apparent condition of the goods and of the packing ;
(*k*) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it ;
(*l*) if the goods are sent for payment on delivery, the price of the goods, and if the case so requires, the amount of the expenses incurred ;
(*m*) the amount of the value declared in accordance with the rule 22 (2) ;
(*n*) the number of parts of the air consignment note :
(*o*) the documents handed to the carrier to accompany the air consignment note ;
(*p*) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon ;

(*q*) a statement that the carriage is subject to the rules relating to liability contained in this Schedule

9. ... having been made on ... set out in rule ... himself of the provisions of this Schedule which exclude or limit his liability.

10. (1) The consignor is responsible for the correctness for the particulars ... any ... aid particulars and statements.

11. (1) The air consignment note is *prima facie* evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

(2) The statements in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

12 (1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with rule 13 Nevertheless, if the consignee declines to accept the consignment note or the goods, or if he cannot be communicated with, the consignor resumes his right of disposition.

13. (1) Except in the circumstances set out in rule 12, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air consignment note.

(2) Unless it is othewise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.

(3) If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

14 The consignor and the consignee can respectively enforce all the rights given them by rules 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

15. (1) Rules 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of rules 12, 13 and 14 can only be varied by express provision in the air consignment note.

16. (1) The consignor must furnish such information and attach to the air consignment note such documents as are necessary to meet the formalities of customs,

octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents unless the damage is due to the fault of the carrier or his agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III.

LIABILITY OF THE CARRIER.

17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

20 (1) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

[illegible]

21. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may exonerate the carrier wholly or partly from his liability.

22 [illegible]

time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(4) The sums mentioned in this rule shall be deemed to refer to the French franc consisting of 65½ miligrams gold of millesimal fineness 900.

23 Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Schedule.

24 (1) In the cases covered by rules 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.

(2) In the cases covered by rules 17 the provisions of sub-rule (1) also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

25 (1) The carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as is in the opinion of the Court equivalent to wilful misconduct

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

26. (1) Receipt by the person entitled to delivery of luggage or goods without complaint is *prima facie* evidence that the same have been delivered in [illegible] lain to [illegible] within [illegible] s from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part

27. In the case of the death of the person liable, an action for damages lies in accordance with these rules against those legally representing his estate.

28 An action for damages must be brought at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinarily resident or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination

29. The right of damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

30. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (4) of rule 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) [illegible] a right of actio [illegible] entitled to delive [illegible] er, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV.

PROVISIONS RELATING TO COMBINED CARRIAGE.

31. (1) In the case of combi [illegible] this Schedule are observed as regards the carriage by air.

CHAPTER V.

General and Final Provisions.

32. Any clause contained in the co
into before the damage occurred by w
laid down by this Schedule, whether by
altering the rules as to jurisdiction,
carriage of goods arbitration clauses are allowed, subject to these rules, if the *arbitration is to take place in the territory of one of the High Contracting Parties* within one of the jurisdictions referred to in rule 28.

33. Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Schedule.

34. This Schedule does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

35. The expression "days" when used in these rules means current days, not working days.

36 When a High Contracting Party has declared at the time of ratification of or of accession to the Convention that the first paragraph of Article 2 of the Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority, these rules shall not apply to international carriage by air so performed.

SECOND SCHEDULE.

(*See section 2*).

Provisions as to the Liability of Carriers in the Event of the Death of a Passenger.

1. The liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death.

In this rule the expression "member for the family" means wife or husband, parent, step-parent, grand-parent, brother, sister, half-brother, half-sister, child, step-child, grandchild :

Provided that, in deducing any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

2. An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under the last preceding rule enforceable, but only one action shall be brought in British India in respect of the death of any one passenger, and every such action by whomsoever brought shall be for the benefit of all such persons so entitled as aforesaid as either are domiciled in British India, or, not being domiciled there, express a desire to take the benefit of the action.

3. Subject to the provisions of the next succeeding rule the amount recovered in any such action, after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportions as the Court may direct.

4 Tho Court before which any such action is brought may at any stage of the proceedings make any such order as appears to the Court to be just and equitable in view of the provisions of the First Schedule to this Act limiting the liability of a carrier and of any proceedings which have been, or are likely to be, commenced outside British India in respect of the death of the passenger in question.

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(2) In the cases covered by rules 17 the provisions of sub-rule (1) also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

25. (1) The carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as is in the opinion of the Court equivalent to wilful misconduct.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

26. (1) Receipt by the person entitled to delivery of luggage or goods [illegible] been delivered in [illegible] must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part

27. In the case of the death of the person liable, an action for damages lies in accordance with these rules against those legally representing his estate.

28. An action for damages must be brought at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinarily resident or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination

29. The right of damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

30. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (4) of rule 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV.

PROVISIONS RELATING TO COMBINED CARRIAGE.

31. (1) In the case of [illegible] partly [illegible] to the [illegible] the case of com-bined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Schedule are observed as regards the carriage by air.

(*b*) the carriage of goods by sea in ships carrying goods from a port in British India notified in this behalf in the *Gazette of India* by the Governor-General in Council to a port in Ceylon specified in the said notification,

have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted.

Modification of Rules 4 and 5 of Article III in relation to bulk cargoes.

6. Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the Rules, the bill of lading shall not be deemed to be *prima facie* evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

Saving an operation.

7. (1) Nothing in this Act shall affect the operation of sections four hundred and forty-six to four hundred and fifty, both inclusive, five hundred and two and five hundred and three of the Merchant Shipping Act, 1894.* as amended by any subsequent enactment, or the operation of any other enactment for the time being in force limiting the liability of the owners of seagoing vessels.

(2) The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea before such day not being earlier than the first day of January, 1926, as the Governor General in Council may by notification in the *Gazette of India*, appoint, no title issued, whether before or such contract as aforesaid.

SCHEDULE

RULES RELATING TO BILLS OF LADING

ARTICLE I.

Definitions.

In these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say—

(*a*) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper :

(*b*) "Contract of carriage" applies only to contacts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same :

(*c*) "Goods" includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried :

(*d*) "Ship" means any vessel used for the carriage of goods by sea :

(*e*) "Carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

ARTICLE II.

Risks.

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilies, and entitled to the rights and immunities hereinafter set forth.

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* 57 and 58 Vict. c. 60.

ARTICLE III.

Responsibilities and Liabilities.

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

(*a*) Make the ship seaworthy :

(*b*) Properly man, equip, and supply the ship :

(*c*) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

master or agent
er a bill of lading

s as the same are
starts, provided
such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage :

(*b*) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper :

o state or
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received,

Notes.—*Vide* 62 M. L. J. 736.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (*a*), (*b*) and (*c*).

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In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

Notes.—This clause does not limit the time but extinguishes right to sue. 133 Ind Cas. 77=A. I R 1931 Sind. 124=25 S.L. R. 222.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a

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Notes —Article 3, clause. 6, does not exclude mates' receipt in addition to bill of lading. 134 Ind. Cas. 753=53 C. L. J. 111=A. I. R. 1931 Cal. 373 (S B).

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE IV.

Rights and Immunities.

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(*a*) act, neglect or default of the master, mariner, pilot, or the servants of the carrier in the [illegible]

(*b*) fire, u[illegible]

(*c*) perils, [illegible]

(*d*) act of God .

(*e*) act of war :

(*f*) act of public enemies :

(*g*) arrest or restraint of princes, rulers or people, or seizure under legal process :

(*h*) quarantine restriction :

(*i*) act or omission of the shipper or owner of the goods, his agent, or representative :

(*j*) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general :

(*k*) riots and civil commotions :

(*l*) saving or attempting to save life or property at sea :

(*m*) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods :

(*n*) *insufficiency of packing :*

(*o*) insufficiency or inadequacy of marks :

(*p*) latent defects not discoverable by due diligence :

(*q*) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, of any resonable deviation shall not be deemed to be an infringement or breach or these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 100*l.* per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier,

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed,
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any event for loss or
ereof has been know-

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation,

to general average, if any.

ARTICLE V.

Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities

The provisions of these Rules shall not be applicable to charterparties, but if bills of lading are issued in the case of a ship under a charterparty they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI.

Special Conditions.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such
pect of such goods
is not contrary to
regard to the load
goods carried by
issued and that th
shipment made
the character or
condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

ARTICLE VII

Limitations on the Application of the Rules.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII.

Limitation of liability.

The provisions of these Rules shall not affect the rights and obligations of the carrier under any Statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX.

The monetary units mentioned in these Rules are to be taken to be gold value.

THE CARRIERS ACT, 1865.

ACT NO. III OF 1865.

RECEIVED THE G. G.'S ASSENT ON THE 14TH FEBRUARY, 1865.

An Act relating to the rights and liabilities of Common Carriers.

Preamble.

WHEREAS it is expedient not only to enable common carriers to limit their liability for loss of or damage to property delivered to them to be carried but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants, or agents ; It is enacted as follows :—

Common Carriers—"A common carrier is one who offers to carry goods for any person between certain termini and on a certain route. He is bound to carry for all who tender to him goods ar [illegible] against all loss but that arising [illegible] lien on the goods for the price [illegible] *Smith*, 1 C. P. D. 523 ; see al[illegible] 1 Salk. 249. The question wh[illegible] [illegible] Car. & P. 598. A common carrier therefore [illegible] of liability, the one for the losses for which [illegible] which he is liable under his obligation to carry safely. Speaking generally the first of these are insurable risks from which the [illegible] ment [illegible] *The* [illegible] W N. [illegible] *ggs* v. [illegible] *otts*, 4 Camp. [illegible]; *Boyd* v. *Dubois*, 3 Camp 133.

Preamble—The common law liability existing at the date of the Act is left untouched 24 C 803 ; 10 C. 166 F. B.=13 C. L. R 342 ; 5M. 211. In India carriers by sea do not get benefit of Act III of 1865 40 B. 529=33 Ind. Cas. 536 A common carrier does not cease to be so if he enters into special contract lawfully limiting his liability. 31 Ind. Cas 474.

Short title.

1. This Act may be cited as "The Carriers Act, 1865."

Interpretation clause.

2. In this Act, unless there be something repugnant in the subject or context—

"Common carrier" denotes a person, other than the Government, engaged [illegible] place to place, by land [illegible] whether incorporated or not :*

Notes—The Government is excluded. 10 C. 187. As to who are common carriers, *vide* 3 M. 107 ; 26 B. 562 ; 38 M. 941 ; 36 M. 941 ; 6 C. 227 ; 28 M. 400 ; 2 N. W. P. 387 ; 3 N. W. P. 125

The Act does not apply to carriage by sea. 52 B. 37=A I. R. 1928 Bom. 5. The definition of a "common carrier" in this section is framed without reference to the extent of his liability 31 Ind. Cas. 474. Person holding out to carry good is from jetty to ship is common carrier. 37 C. W. N. 559=60 C 879=A. I. R. 1933 Cal. 735 Licensee under obligation to carry goods of all persons who require his services is common carrier. A I. R. 1933 Cal. 735. A common carrier by merely making special stipulation does not indicate that he is acting outside his business as a common carrier. *Ibid.* "For all persons indiscriminately" means simply that

* Here certain words which were repealed by Act 10 of 1914 have been omitted.

carriers are not at liberty to refuse business. 80 Ind. Cas. 1038=51 I. A 28 (P. C.) =28 C. W N. 302 (P. C.) Duties and liabilities of Common Carriers in India are governed by English Common Law and Carriers Act and not by the law relating to bailees under the Contract Act. 50 Ind. Cas. 562. *The Carriers Act applies to* Railway only to a limited extent. 35 C. W. N. 338. In case of common carriers by sea English principles apply and not principles of Contract Act. A. I. R. 1931 Sind. 124=25 S. L. R. 222=133 Ind. Cas. 77.

Carriers not to be liable for loss of certain goods above 100 rupees in value, unless delivered as such.

3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.

Notes.—The earlier sections extend to India the principles embodied in the [illegible] *of Objects and Reasons,* [illegible] exempting a carrier from loss arising from negligence or criminal acts, there is [illegible] *of construction at any rate,* [illegible] I. 226 ; see also *Price* v. [illegible] *mes* v. *Nelson* (1907) 1 K. B. [illegible] the rule. 59 C. 472=36 [illegible] 59 C. 472.

For carrying such property payment may be required at rates fixed by carrier.

4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix :

Proviso.

Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

Object—It is unreasonable to expect a [illegible] and jewels possibly worth lacs for the [illegible] servants in the one case may cause him on [illegible] might be his ruin. It is only right therefor [illegible] higher rates for certain goods. 32 M 122. Both the description and the value must be given. 5 M 208 ; 19 B. 192. As to what is sufficient declaration of value and description, *vide*, 7 A. L. J. 606=6 Ind. Cas. 333 ; 19 B. 165 ; 19 B. 194 ; 5 M. 208.

The person entitled to recover in respect of property lost or damaged may also recover *money paid for its carriage.*

5. In case of the loss or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforsaid.

Notes.—The *plaintiff delivered a box to the defendant Railway Company for* carriage to a particular destination. At the time of booking the box, the plaintiff made a representation to the officer of the Company that the box contained articles of the value of about Rs. 1,000 and wished that special care should be taken to prevent the box or its contents from being injured by rain. He was asked the nature of the contents and he showed a list of the contents. The officer of the Company,

however, failed to ask the plaintiff to pay increased rate of charges for the risk: *Held*, that the declaration made by the plaintiff was a sufficient declaration. ... Steamer Company ... he Act makes no ... 17 C. W. N. 970.

6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act XXII of 1863,* may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

In respect of what property liability of carrier not limited or affected by public notice.

Carriers, with certain exceptions, *may limit liability by* special contract.

Notes.—The effect of section 6 and 8 is that the liability of a common carrier ... in the schedule may be ... e when such loss shall have ... er or any of his servants. ... an stipulate that he shall ... V. N. 905. (P. C) In India a ... cf special contract. When ... C. 166 F. B.; 18 C. 620 ... is special contract a carrier ... ability of "carrier" is that the nature of the contract entered into must either have limitation of liability under the Act made expressly and in writing or the fact must be such that the contractor was engaging in a different type of business from that of a common carrier. 28 C. W. N. 302

7. The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act *XXII of 1863** for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract; but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

Liability of owner of railroad or tramroad constructed under Act XXII of 1863, not limited by special contract.

When such owner answerable for loss or damage.

... his liability to his own transport system, liable for the loss or destruction on portion beyond his own system or in consequence of acts or default of persons other than his own servants. 45 Ind. Cas. 485

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the† criminal act of the carrier or any of his agents or servants "and shall also be liable to the owner for loss of or damage to any such property, other than property

Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent.

* See new Act I of 1894.

† Certain words here have been omitted by Act XIII of 1921.

shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled ; and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the government of the East India Company ; It is enacted as follows :—

Notes —Regulation VII of 1832 or Act XXI of 1850 can be held to be applicable to the province of Oudh from the date of annexation at the earliest and therefore the regulation and the Act do not apply to the case of convert who renounced his religion before the date. A I R 1928 Oudh. 138=3 Luck. 154=4 O. W. N. 1243.

Law or usage which inflicts forfeiture of, or affects rights on change of religion or loss of caste to cease to be enforced.

1. So much of any law or usage now in force within the territories subject to the government of the East India Company, as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories.

Notes —A Hindu widow's estate is preserved to her by force of this Act notwithstanding forfeiture of it by Hindu Law by reason of her unchastity and consequent loss of caste *Sarnomony Dasi* v. *Nemy Charan*, 2 Taylor & Bell 501 ; 1 B. 559 ; 32 C. 871 ; 19W R 367. When once a person has changed his religion and personal law, that law will govern the succession rights of his children A I R. 1931 Oudh. 301. This Act only protects the rights of person who has lost his religion. Rights of unconverted relations to succeed to the convert are not protected by the Act. Hence [illegible]

excluded from religion and community. The Act does not apply to the case of a Hindu who has become a *Jati Vaishnava* 35 C. W. N 726 ; see also A. I. R 1930 P. C 251. "He is deprived of caste" means an "outcaste." 134 Ind. Cas. 1272=58C. 1392 =54 C L. J 61=35C.W.N. 726=A I R 1931 Cal 741 [illegible]
ally renouncing religion A. I. R. [illegible]
Act XXI of 1850 does not apply only [illegible]
ed his or her religion or been exclu[illegible]
any person from having any right [illegible]
having renounced his religion or hav[illegible]
to a case where a person born a Mohammedan, his father having renounced the Hindu religion, claims by right of inheritance under the Hindu law a share in his father's family I L R. 11 All. 100 *See* also, 23 P.L.R. 1903 ; 2 N.W.P. 446 Since this Act came into force, mere loss of caste does not occasion a forfeiture of right of property. 1 Bom. 559 ; *see* also 1 All. 549. Under the Hindu Law, as administered in the Bengal School a widow who has once inherited the estate of her husband is not liable to [illegible]
Act XXI of [illegible]
quence of he[illegible]
171 ; *see* also [illegible] ; 31 M. 100 ; 15 C. W. N. 545 ; 29 A. 487 ; 60 P. R. 1901 ; 1. Ind. Cas 647 ; 52 P. W. R. 1907 ; 1 B. 559 ; 32 C. 871.

Provisions apply only to the convert and to his descendants. 40. M. 1118=37 Ind. Cas. 753 ; 107 Ind. Cas. 890 This Act secures after apostacy the same rights to individuals in property as they enjoyed before apostacy. 31 Ind. Cas. 476 ; 55 Ind. Cas. 420 ; 78 Ind. Cas. 749 ; 98 Ind. Cas 867 ; 129 Ind Cas 133. The effect of the Act is not to enlarge the convert's interest in any property or to get rid of any [illegible]

[illegible] Cas. [illegible]

however, failed to ask the plaintiff to pay increased rate of charges for the risk: *Held*, that the declaration made by the plaintiff was a sufficient declaration. *Rohikhand* v. *Jogdamba*, 6 Ind. Cas. 333; see also 19 B. 165. The Steamer Company were liable although the goods were delivered as "luggage" as the Act makes no distinction between "personal luggage" and goods or merchandise. 17 C. W. N. 970.

In respect of what property liability of carrier not limited or affected by public notice.

6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act XXII of 1863,* may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

Carriers, with certain exceptions, may limit liability by special contract.

Notes.—The effect of section 6 and 8 is that the liability of a common carrier for the loss of goods not being of the description contained in the schedule may be limited by special contract signed by the owner, save when such loss shall have [illegible] the carrier or any of his servants. [illegible] carrier can stipulate that he shall [illegible] 19 C W. N. 905. (P. C) In India a common carrier like an insurer is liable in the absence of special contract. When the loss is caused by King's enemies he is not liable 10 C 166 F B; 18 C. 620 P. C.; 21 C. L. J 566; 51 Ind. Cas 562. When there is special contract a carrier is not liable. 17 C 39. What is required to limit the liability of "carrier" is that the nature of the contract entered into must either have limitation of liability under the Act made expressly and in writing or the fact must be such that the contractor was engaging in a different type of business from that of a common carrier. 28 C. W. N. 302.

Liability of owner of railroad or tramroad constructed under Act XXII of 1863, not limited by special contract.

7. The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act XXII of 1863* for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract; but the owner of such railroad or tramroad shall be liable for the loss *of or damage to property delivered to him to be* carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

When such owner answerable for loss or damage.

Notes—There is no obligation on a Railway Company to carry a passsenger safely. They are only legally bound to carry him with reasonable care and diligence. 28 C 401=5 C. W. N. 449 P C. In the case of continuous carriers the authorities establish that when the goods have to be carried with the aid of different transport [illegible]

own servants. 45 Ind. Cas. 485.

Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the† criminal act of the carrier or any of his agents or servants "and shall also [illegible] to the owner for loss of or damage to any such property, other than

* See new Act I of 1894.
† Certain words here have been omitted by Act XIII of 1921.

to which the provisions of section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants"*

Notes—A carrier is liable for the criminal act of his servant or agent even [illegible] 41 C. 82 ; 34 [illegible] carrier is not relieved of his contr[illegible] of contract. 27 C. W. N. [illegible] of misconduct arises [illegible] 158. [illegible] ; see also 39 B. 485 ; 65 Ind. Cas. 169 ; 21 Bom. L. R. 40=51 Ind. Cas. 309.

Loss of goods.—shows negligence or criminal act on the part of a carrier. 40 C. 716.

Owner.—The liability of a carrier is to the owner. 23 C. W. N. 998 ; see also *Combs* v. *Bristol*, 3 H. & N. 510. When the consignee is the owner he can sue. *Dunlop* v. *Lambert*, 6 C. & F. 600 ; *Dutton* v. *Solomonsin*, 3 B. & B. 582. A person suffering loss can maintain suit apart from any privity of contract. A. I. R. 1933 Cal. 735. Who tenders the goods to the carrier is immaterial. *Ibid.*

Burden of proof—The burden of proof is upon the carrier if he wants exemption. 40 C. 716 ; see also 15 C. W. N. 226 : 47 C 1027 ; 41 C. 80 ; 130 Ind. Cas. 658.

Suitors against carriers for loss, damage, or non-delivery not required to prove negligence, &c.

9. In any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage, or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.

Scope of [illegible] den of proof [illegible] theory, that th[illegible] 33 C. L. J. 90 [illegible] 21 C. L J. 565 [illegible] 24 C. 882. Th[illegible] 127, 128. "N[illegible] negligence. 116 Ind. Cas. 148=A. I. R. 1928 Cal 371

Notice of loss or injury to be given within six months.

10.† No suit shall be instituted against a common carrier for the loss of, or injury to, goods, entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the

* The words within quotations have been added by Act XIII of 1921.

† Section 10 has been added by the Indian Carriers Act, 1899 (Act X of 1899) s. 2.

suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.

Notes—Notice under the section mus[illegible] carrier had knowledge *aliunde* of the loss. [illegible] 27 C. L. J. 204=41 Ind. Cas 917; see also 3[illegible] 31 C. W. N. 358. This section places a [illegible] as a railway, and makes it obligatory upon a person wanting to sue a steamer company to give notice of such suit within the time mentioned in the section. *River Steam Navigation Co. Ltd* v. *Kashi Prosad*, 8 C. L. J. 192.

Power to Governor-General in Council to add to the schedule.

11.* The Governor General in Council, may, by notification in the Gazette of India, add to the list of articles contained in the Schedule to this Act, and the Schedule shall, on the issue of any such notification, be deemed to have been amended accordingly.

SCHEDULE.

Gold and silver coin.
Gold and silver in a manufactured or unmanufactured state.
Precious stones and pearls.
Jewellery.
Time-pieces of any description.
Trinkets.
Bills and hundies
Currency notes of the Government of India, or notes of any Banks, or securities for payment of money, English or foreign.
Stamps and stamped paper
Maps, prints, and works of art.
Writings
Title-deeds
Gold or silver plate or plated articles
Glass.
China
Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
Shawls and lace.
Cloths and tissues embroidered with the precious metals. or of which such metals form part.
Articles of ivory, ebony, or sandal wood.
[Art pottery and all articles made of marble.
Furs
Government securities.
Opium.
Coral.
Musk, *Itr*, Sandle wood oil, and other essential oils used in the preparation of *itr* or other perfumes.
Musical and scientific instruments.
Feathers
Narcotic preparations of hemp.
Crude India-rubber.
Jade, Jade stone and amber
[illegible]
Zahir Mohra Khatai.]†

THE CASTE DISABILITIES REMOVAL ACT, 1850.

ACT NO. XXI OF 1850.

PASSED ON THE 11TH APRIL, 1850.

An Act for extending the principle of section 9, Regulation VII, 1832, of the Bengal Code throughout the Territories subject to the Government of the East India Company.

Preamble

WHEREAS it is enacted by section 9, Regulation VII, 1832, of the Bengal Code that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuation or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions, the laws of those religions

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*. Section 11 has been added by Act XIII of 1921.

† Added by Notification No. 5299, dated 14th October 1922, *vide Gazette of India* 1922, part I, p 1235

shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled ; and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the government of the East India Company ; It is enacted as follows :—

Notes.—Regulation VII
the province of Oudh from
regulation and the Act do
before the date. A. I R 19

Law or usage which inflicts forfeiture of, or affects rights on change of religion or loss of caste to cease to be enforced.

1. So much of any law or usage now in force within the territories subject *to the government of the East India Company*, as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories.

Notes.—A Hindu widow's estate is preserved to her by force of this Act notwith-
...nchastity and consequent loss
Bell 501 ; 1 B. 559 ; 32 C.
s religion and personal law,
A. I R. 1931 Oudh. 301.
t his religion Rights of un-

Act XXI of 1850 does not apply only to a person who has himself or herself renounced his or her religion or been excluded from caste. The latter part of s. 1. protects any person from having any right of inheritance affected by reason of any person having renounced his religion or
to a case where a person born
Hindu religion, claims by right of
father's family I L R. 11 All. 100 *see* also, 23 ... 1903 ; 2 N W.P 446. Since this Act came into force, mere loss of caste does not occasion a forfeiture of right of property. 1 Bom. 559 ; *see* also 1 All. 549 Under the Hindu Law, as administered in the *Bengal School* a *widow* who has once inherited the estate of her husband is not liable to
Act XXI of
quence of he
171 ; *see* also 31 B 495 ; 2 C. L. J 97 ; 31 M. 100 ; 15 C. W. N. 545 ; 29 A. 487 ; 60 P. R. 1901 ; 1. Ind. Cas 647 ; 52 P. W. R. 1907 ; 1 B. 559 ; 32 C 871.

Provisions apply only to the convert and to his descendants. 40 M. 1118=37 Ind. Cas. 753 : 107 Ind Cas 890. This Act secures after apostacy the same rights to individuals in property as they enjoyed before apostacy. 31 Ind Cas. 476 ; 55 Ind. Cas. 420 ; 78 Ind. Cas. 749 ; 98 Ind Cas 867 ; 120 Ind Cas 133
Act is not to enlarge the
condition of restriction to
Cas. 514 ; 98 Ind Cas. 867 ;
with Sudra female is valid.
in the estate of his father as
apply to such son. 130 Ind.
Bom. 89.

THE CENTRAL BOARD OF REVENUE ACT, 1924.

ACT NO. IV OF 1924.

RECEIVED THE ASSENT OF THE G. G. ON THE 13TH MARCH, 1924.

An Act to provide for the constitution of a Central Board of Revenue and to amend certain enactments for the purpose of conferring powers and imposing duties on the said Board.

WHEREAS it is expedient to provide for the constitution of a Central Board of Revenue and to amend certain enactments for the purpose of conferring powers and imposing duties on the said Board; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Central Board of Revenue Act, 1924.

(2) It shall come into force on the first day of April, 1924.

Constitution of Central Board of Revenue.

2. As soon as may be after the commencement of this Act, the Governor-General in Council shall constitute a Central Board of Revenue, consisting of one or more persons appointed by him, which shall be subject to the control of the Governor-General in Council in the exercise of such powers and the performance of such duties as may be entrusted to it by the Governor-General in Council or by or under any law.

Procedure of the Board.

3. The Governor-General in Council may make rules for the purpose of regulating the transaction of business by the Central Board of Revenue, and every order made or act done in accordance with such rules shall be deemed to be the order or act, as the case may be, of the Central Board of Revenue.

Amendments of enactments.

4. The enactments specified in the Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof:

Provided that, where the power to make any appointment, or issue any notification, order, scheme or rule, or prescribe any form, is transferred by the operation of this Act from any authority to the Central Board of Revenue or any other authority, any such appointment, notification, order, scheme, rule, or form made, issued or prescribed by the first mentioned authority before the commencement of this Act shall continue in force and be deemed to have been made, issued or prescribed by the Central Board of Revenue or such other authority, as the case may be, unless and until it is superseded by an appointment, notification, order, scheme, rule or form made, issued or prescribed by the said Board or authority.

THE SCHEDULE.

ENACTMENTS AMENDED

(*See Section 4.*).

Year	No.	Short title.	Amendments
1878	VIII	The Sea Customs Act, 1878.	1. In section 3— (1) for clause (a) the following clause shall be substituted, namely:— "(a) 'Chief Customs authority' means the Central Board of Revenue constituted under the Central Board of

Year.	No.	Short title.	Amendments.
1878	VIII	The Sea Customs Act 1878, *contd.*	Revenue Act, 1924, and includes, in relation to any power or duty which the Governor General in Council may, by notification in the *Gazette of India*, transfer from the Central Board of Revenue to a Local Government, the Local Government or such officer as the Local Government may appoint in that behalf"; and (2) after clause (*j*) the following clause shall be inserted, namely :— "(*k*) 'Official Gazette' means, in relation to a notification issued by a Local Government, the local official Gazette and, in relation to a notification issued by the Central Board of Revenue, the *Gazette of India*." 2. For section 6 the following section shall be substituted, namely — "6. The Governor-General in Council may appoint such persons as he thinks fit to be officers of customs, and to exercise the powers conferred, and perform the duties imposed, by this Act on such officers." Appointment of customs officers. 3. For section 7 the following section shall be substituted, namely :— "7. The Governor-General in Countil may delegate to any Local Government or to the Chief Customs-authority any power conferred upon him by section 6, and the Local Government or the chief customs-authority may delegate to any officer of Customs any power so delegated to it." Delegation of powers under section 6. 4. [illegible] tuted, and in section 11, the words "within the territories administered by it" shall be omitted. 5. In section 23, for the words "The Local Government" the words "The Chief Customs-authority" shall be substituted. 6. In sections 53, 74, 76, 79, 85, 96, 116, 128, 133 and 147, the word "local" wherever it occurs in the expression 'Local Official Gazette," shall be omitted.

Year.	No.	Short title.	Amendments.
1878	VIII.	The Sea Customs Act 1878, *contd.*	7. In section 88, for the words "the Local Government may from time to time direct" the words "*the Chief Customs*-authority may, with the concurrence of the Local Government, direct" shall be substituted.
			8. In section 128, for the words "the Local Government" the words "the Chief Customs-authority" shall be substituted.
			9. In section 133, for the words "the Local Government, subject to the control of the Governor-General in Council," the words "the Chief Customs-authority" shall be substituted.
			10. In section 155, after the words "the Local Government may" the words "with the previous sanction of the Governor-General in Council" shall be inserted, and for the words "by its own officers" the words "by officers of Government" shall be *substituted.*
			11 In section 157, for the words "the Local Government" the words "the Governor-General in Council" shall be substituted.
			12. In section 188, for the words "the Local Government," in both places where they occur, the words "the Governor-General in Council" shall be substituted.
			13. In section 191, for the words "the Local Government" the words "the Governor-General in Council" shall be substituted.
			14 After section 204 the following sections shall be inserted, namely .—
			"205. Any notification published in the *Gazette of India* by the Chief-Customs-authority under section 53, section 74, section 76 section 79, section 85, section 96, section 116, section 128, section 133 or section 147 shall forthwith be republished in the local official Gazette of each province to which it relates,"* (Publication of notifications in local official Gazettes.)
1908	X	The Indian Salt-duties Act, 1908	In section 2, for the words, "the Local Government" the words and figures "*if so empowered by the Governor-General in Council*, the Local Government or the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924" shall be substituted.

* Certain entries after this have been omitted by Act 12 of 1927.

Year.	No.	Short title.	Amendments.
1914	III	The Indian Copyright Act, 1914.	In sub-section (2) of section 6, for the words "the Local Government" the words "the Chief Customs authority shall be substituted."
1922	XI	The Indian Income tax Act, 1922.	1. After clause (4) of section 2 the following clause shall be inserted, namely :— "(4A) 'the Central Board of Revenue' means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924." 2. In section 5— (i) in clause (a) of sub-section (1) for the words "a Board of Inland Revenue" the words "the Central Board of Revenue" shall be substituted ; and (ii) Sub-section (2) shall be omitted. 3. In clauses (6) and (11) of section 2, in sub-section (5) of section 5, in sub-section (6) of section 18, in sub-section (5) of section 46, in sub-section (1) of section 59, and in sub-section (3) of section 64, for the words "the Board of Inland Revenue" the words "the Central Board of Revenue" shall be substituted.

THE CHARITABLE AND RELIGIOUS TRUSTS ACT, 1920.

ACT NO. XIV OF 1920.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 20TH MARCH 1920.

An Act to provide more effectual control over the administration of charitable and religious trusts.

WHEREAS it is [illegible] tion regarding trusts [illegible] nature, and to enab [illegible] Court on certain ma [illegible] expenditure incurred in certain suits against the trustees of such trusts ; It is hereby enacted as follows :—

Trust Created for public purposes—"A trust" said *Lord Romily* in *Evan v. Corporation of Avon*, 29 Beav. 149, "may be of two characters ; it may be of a general character or of a private and individual character. A person might leave a sum of money to a corporation in trust to support the children of A. B. and pay them the principal at twenty-one. That would be a private and particular trust which the children could enforce against the corporation if the corporation applied the property to its own benefit. On the other hand a person might leave money to a corporation in trust for the benefit of the inhabitants of a particular place, or for lighting the town. That would be a public trust for the benefit of all the inhabitants." Provisions for *sadabrat*—contribution towards marriages and education of Brahmin children—Trust comes within the Act. A. I. R. 1919 Pat. 723=124 Ind. Cas 629. Trust covered by the Act is not to be so wide in its purpose as a *wakf* under the Musalman *Wakf* Act of 1923. A. I. R. 1929 Oudh. 225=4 Luck. 429=117 Ind. Cas. 739. But see 134 Ind Cas. 417=A. I. R. 1931 Pat. 354. This Act has no application

where the grant is not for temple but is personal. A. I. R. 1928 Oudh. 241=108 Ind. Cas. 98 ; see also A. I. R 1930. Oudh 53=119 Ind. Cas. 565. A worshipper at a Gurdwara is one interested in the public trust within the scope of Act XIV of 1920. 36 P.L.R. 162=A. I. R. 1934 Lah. 949.

Short title and extent.

1. (1) This Act may be called the Charitable and Religious Trusts Act, 1920.

(2) It extends to the whole of British India :

Provided that the Governor-General in Council may, by notification in the *Gazette of India*, direct that this Act, or any specified part thereof, shall not extend to any specified province or area, or to any specified trust or class of trusts.

... party ceases to be a trustee. *Syed Reza* v. ... then not acted upon cannot be regarded ... eligious Endowment Act is not repealed by this Act. A. I. R 1935 Mad. 56.

Interpretation.

2. In this Act, unless there is anything repugnant in the subject or context, "the Court" means the Court of the District Judge, " or any other Court empowered in that behalf by the local Government"* and includes the High Court in the exercise of its ordinary original civil jurisdiction.

Notes.—The Courts mentioned in this section have jurisdiction to try a case under this Act. A District Judge's Court is a Court subordinate to the High Court. 121 Ind. Cas. 267=51 A 957=A. I. R 1929 All. 581.

Power to apply to the Court in respect of trusts of a charitable or religious nature

3. Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate to obtain an order embodying all or any of the following directions, namely :—

(1) directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as to any of these matters, and

(2) directing that the accounts of the trust shall be examined and audited :

Provided that no person shall apply for any such direction in respect of accounts relating to a priod more than three years prior to the date of the petition.

Notes.—This section authorises any person having an interest in a trust of a charitable or religious nature to apply to Court for a direction on the trustee for certain information relating to the trust and for an examination and auditing of the accounts of the trust. But a person who claims adversely to the trust and who is not liable under the section is not a proper party to proceedings under this Act. *Syed Reza* v. *Kazi Nurdin*, 78 Ind. Cas. 174=A. I. R. (1925) Cal. 527. In order to determine whether a trust is a trust for public purposes, substance and primary intention of the creator must be seen A I. R. 1929 Oudh 225=4 Luck. 429=117 Ind Cas. 739 Benefit of specified person such as kindred dependants and others is not a public purpose. A I. R 1929 Oudh. 225=117 Ind. Cas. 739. "Interest in trust" depends upon nature of trust. Secretary of Public Institution entitled to stay in *Dharmsala* created by trust is one interested in such trust. A. I. R. 1928 All. 758 =50 A 880=26 A. L. J. 1379 Trust in s. 3 includes *wakf* created for public purposes of religious and charitable nature. 134 Ind Cas. 417=10 Pat. 506=12 P. L. T. 793=A. I R. 1931 Pat. 354. An application under this section is maintainable even where question of title is raised. 58 B. 623.

*The words within quotations have been inserted by Act 41 of 1923.

Contents and verification of petition.

4. (1) The petition shall show in what way the petitioner claims to be interested in the trust, and shall specify, as far as may be, the particulars and the audit which he seeks to obtain.

(2) The petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908,* for signing and verifying plaints.

Signed.—A petition may be signed by the party by his duly authorised agent. Any defect in signature can be cured any time before judgment. *Basdeo* v. *Smith*, 22 A. 55; *Mohini* v. *Bugsi*, 17 C. 580

Verification.—Verification should state what matters are true to the knowledge of the person making it, and which (if any) are stated on information and belief. A defective verification is cured by the same procedure as cures a defective signature. *Rajit Ram* v. *Katesar*, 18 A. 396; *Fatehchand* v. *Mansab*, 20 A. 442. The verification must be made by the party himself or one of the parties *Vide* Order 6, rule 15 of C. P. Code.

Procedure on petition.

5. (1) If the Court on receipt of a petition under section 3, after taking such evidence and making such inquiry, if any, as it may consider necessary, is of opinion that the trust to which the petition relates is a trust to which this Act applies, and that the petitioner has an interest therein, it shall fix a date for the hearing of the petition, and shall cause a copy thereof, together with notice of the date so fixed, to be served on the trustee and upon any other person to whom in its opinion notice of the petition should be given

(2) On the date fixed for the hearing of the petition, or on any subsequent date to which the hearing may be adjourned, the Court shall proceed to hear the petitioner and the trustee, if he appears, and any other person who has appeared in consequence of the notice, or who it considers ought to be heard, and shall make such further inquiries, if any, as it thinks fit. The trustee may and, if so required by the Court, shall at the time of the first hearing or within such time as the Court may permit present a written statement of his case. If he does present a written statement, the statement shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908,* for signing and verifying pleadings.

(3) If any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies, and undertakes to institute within three months a suit for a declaration to that effect and for any other appropriate relief, the Court shall order a stay of the so instituted, shall continue the stay, until the

given, or if after the expiry of the three months no such suit has been instituted, the Court shall itself decide the question.

(5) On completion of the enquiry provided for in sub-section (2), the Court shall either dismiss the petition or pass thereon such other order as it thinks fit.

Provided that, where a suit has been instituted in accordance with the provisions of sub-section (3), no order shall be passed by the Court which conflicts with the final decision therein.

(6) Save as provided in this section, the Court shall not try or determine any question of title between the petitioner and any person claiming title

section 3 of the Charitable and 1 of a temple trust, which is managed by the vote of the majority of the trustees, all the trustees must be made parties, and where some only of the trustees are made parties, an order passed on the application is not binding on the remaining trustees. *Srinivasa* v. *Annathaham*, 82 Ind. Cas. 733=35 M. L. T. 51=(1924) M. W. N. 515. That endowment board

* V of 1908.

is disinclined to exercise power under Madras Act is good reason for District Judge ,6. Order under this section , 96. Permission given under District Judge passing order to property is maintainable. 118 Ind. Cas. 513=A. I R. 1929 All. 506=1929 A. L. J. 653 Non compliance with order under s 5 for filing accounts amounts to breach of trust by virtue of section 6 Suit under s. 92 C. P. Code is competent without sanction of Advocate General even by person other than individual who obtains order under s. 6. 38 M. L. W. 730=1933 M. W. N. 1285=65 M. L. J. 690=A. I. R. 1933 Mad. 854. Where the opposite party raises a question of title it is open to the claimant to take advantage of s. 5 (3) and to get the question determined in a regular suit. 58 B. 623=36 Bom. L. R. 687=A. I. R. 1934 Bom. 343 The decision of the District Judge does not operate as *res judicata*. 36 P. L. R. 13=A. I. R. 1934 Lah. 771. A revision lies against order of the District Judge where his decision is based upon irrelevant and inadmissible evidence. 58B. 623=36 Bom. L. R. 687.

Failure of trustee to comply with order under section 5.

6. If a trustee without reasonable excuse fails to comply with an order made under sub section (5) of section 5, such trustee shall, without prejudice to any other penalty or liability which he may incur under any law for the time being in force, be deemed to have committed a breach of trust affording ground for a suit under the provisions of sections 92 of the Code of Civil Procedure, 1908 ;* and any such suit may, so far as it is based on such failure, be instituted without the previous consent of the Advocate General.

Notes—Failure on the part of a trustee to comply with an order passed under section 5 clause (5), will make him liable for breach of trust and a suit against him may be instituted under section 92 of the Civil Procedure Code without the previous consent of the Advocate General He is also not exonerated from any liablity or penalty which he may incur under any law. The consent of the Advocate General is required, because that consent will show that the persons suing are persons who have interest in the trust as well as that the trust is a public trust of the character mentioned in section 92 of the Civil Procedure Code *Vide Sajedara Raja* v. *Gour Mohan*
quiry u
in as m
suing h
under s
Judge
582=118 Ind. Cas. 385. In such a suit accounts for whole period of trusteeship can be ordered. *Ibid*

Powers of trustee to apply for directions.

7. (1) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for public purpose of a charitable or religious nature may apply by petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advice or direction of the Court on any question affecting the management or administration of the trust property, and the Court shall give its opinion, advice or direction, as the case may be, thereon :

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

(2) The Court on a petition under sub section (1), may either give its opinion, advice or direction thereon forthwith or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the trust, or to be published for information in such manner, as it thinks fit.

* V of 1908.

(3) On any date fixed under sub section (2) or on any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub-section (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made.

[illegible], and therefore if [illegible] the sanction of the [illegible] in an application for that purpose" Lewin *on Trust*, 12th Ed. p. 419 citing Re Wylly's *Trust*, 28 [illegible] *tor*, 3 M. & K. 252 ; *Goodson* v. *Ellison*, 3 Russ. [illegible] 3 ; *Knight* v. *Martin*, 1 R. & M. 70 ; *Taylor* [illegible] *Stannard*, 3 M & K 566 ; *Campbell* v. *Home*, 14 C. C C 644 ; *Gardiner* v *Downess*, 22 Beav 397. *Merlin* v. *Blagrave*, 25 Beav. 137 ; *Cook* v. *Harvey*, W. N (1874) p. 69. Application to the District Judge can be made for advice in a case. 121 Ind. Cas. 267=51 A. 957=A. I R. 1929 All. 581. A trustee of express or constructive trust created for public purpose can apply to Civil Court for opinion or advice where any substantial part of property is situate. A. I. R. 1935 All. 360 Judge should not dispose of matters without giving opportunity to parties to produce evidence. Order is not decree nor appealable order. A. I. R. 1935 All. 147.

Clause (4) —"It would be impossible to hold a trustee answerable for an act not done by himself, but by the Court It is the duty, however, of the trustee to fully inform the Court of all the material facts within his knowledge, and if he improperly withhold them, he will be made responsible for the result of his suppression of facts."—*Lewin on Trust*, 12th Ed p 419.

Costs of petition under this Act.

8. The costs, charges and expenses of and incidental to any petition, and all proceedings in connection therewith, under the foregoing provisions of this Act shall be in the discretion of the Court, which may direct the whole or any part of any such costs, charges and expenses to be met from the property or income of the trust in respect of which the petition is made, or to be borne and paid in such manner and by such persons as it thinks fit :

Provided that no such order shall be made against any person (other than the petitioner) who has not received notice of the petition and had a reasonable opportunity of being heard thereon.

Notes.—Where there is reasonable ground for the application the trustees would be paid their costs. *Vide notes under* s 7.

Savings.

9. No petition under the forgoing provisions of this Act in relation to any trust shall be entertained in any of the following circumstances, namely :—

(*a*) if a suit instituted in accordance with the provisions of section 92 of the Code of Civil Procedure, 1908, * is pending in respect of the trust in question ;

(*b*) if the trust property is vested in the Treasurer of Charitable Endowments, the Administrator-General, the Official Trustee, or any Society registered under the Societies Registraion Act, 1860 ;† or

(*c*) if a scheme for the administration of the trust property has been settled or approved by any Court of competent jurisdiction, or by any other authority acting under the provisions of any enactment.

Notes.—This section lays down that no petition is entertainable by the Court in the circumstances mentioned below. When a suit has already been instituted under section 92 of the Civil Procedure Code, the direction of that Court is binding.

* V of 1908. † XXI of 1860.

Power of Courts as to costs in certain suits against trustees of charitable and religious trusts.

10. (1) In any suit instituted under section 14 of the Religious Endowments Act, 1863* or under section 92 of the Code of Civil Procedure, 1908,† the Court trying such suit may, if, on application of the plaintiff and, after hearing the defendant and making such inquiry as it thinks fit, it is satisfied that such an *order is necessary in the public interest, direct the defendant either to furnish* security for any expenditure incurred, or likely to be incurred by the plaintiff in instituting and maintaining such suit, or to deposit from any money in his hands as trustees of the trust to which the suit relates such sum as such Court considers sufficient to meet such expenditure in whole or in part.

(2) When any money has been deposited in accordance with an order made under sub section (1), the Court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit. Before making over any sum to the plaintiff, the Court shall take security from the plaintiff for the refund of the same in the event of such refund being subsequently ordered by the Court.

Notes—This section supplements section 14 of the Religious Endowments Act, [illegible] provision is made in [illegible] Under this section [illegible] deposit costs of the plaintiff, in a fit case and for public interest. This section is enacted in order to encourage suits under section 14 of the Religious Endowments Act (XX of 1863) and section 92 of the Civil Procedure Code. The option of furnishing security of making a deposit rests with the defendant. The Court can order that he may do one of these two things but it cannot specify which he is to do. Under this section a defendant can be directed to furnish security or to pay a sum of money out of the money in his hands as trustee. He cannot be required to pay any money out of his own pocket. The security is for expenditure already incurred or likely to be incurred. 69 Ind. Cas. 658.

Provisons of the Code of Civil Procedure to apply

11. (1) The provisions of the Code of Civil Procedure, 1908,† relating to—

(*a*) the proof of facts by affidavit,

(*b*) the enforcing of the attendance of any person and his examination on oath,

(*c*) the enforcing of the production of documents, and

[illegible] Act, and the provisions relating to the [illegible] service of notices thereunder.

(2) The provisions of the said Code relating to the execution of decrees shall, so far as they are applicable, apply to the execution of orders under this Act.

Scope—This section empowers a Court to prove any fact by affidavit to summon any witness and to administer an oath to him. The Court is also empowered to enforce the production of any documents and to issue commissions to any witnesses. The procedure of serving a summons under C. P. Code is to be adopted in serving a notice under this Act. An order under this Act is to be executed like a decree of the Civil Procedure Code. But an order under this Act is not a decree under the Civil Procedure Code.

Barring of appeals.

12. No appeal shall lie from any order passed or against any opinion, advice or direction given under this Act.

Notes—The general principle is that an appeal never lies unless expressly given by Statute. *Rex* v. *Cashiobury*, 3 D. & R 35. The creation of a right of appeal is an act which requires legislative authority. Neither an inferior nor a superior tribunal, nor both combined, can create such a right, it being essentially

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* XX of 1863. † V of 1908. ‡ XXI of 1860.

one of the limitation and of the extension of the jurisdiction. *Att. Gen.* v. *Sillem*, H. L. Cas. 704 Where limited tribunal takes upon itself to exercise a jurisdiction which does not belong to it, its decision amounts to nothing, and does not create any necessity for an appeal. *Att. Gen.* v. *Lord Hutham*, Turn. & R. 219. An order of the District Judge directing a defendant to deposit a certain sum under section 10 is open to revision by a High Court. *Kirpal* v. *Narinjan*, 69 Ind. Cas. 658 ; 121 Ind. Cas. 267=A. I. R. 1929 All. 581=51 A. 957.

THE CHARITABLE ENDOWMENTS ACT, 1890.

ACT NO. VI OF 1890.

RECEIVED THE G G'S ASSENT ON THE 7TH MARCH, 1890.

An Act to provide for the Vesting and Administration of Property held in trust for Charitable Purposes.

WHEREAS it is expedient to provide for the vesting and administration of property held in trust for charitable purposes ; It is hereby enacted as follows :—

Title, extent and commencement.

1. (1) This Act may be called the Charitable Endowments Act, 1890.

(2) It extends to the whole of British India, inclusive of* British Baluchistan ; and

(3) It shall come into force on the first day of October, 1890.

Notes.—*Extent.* This Act has been declared in force in Santhal Parganas by Regulation III of 1899.

Definition.

2. In this Act "Charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

Notes.—Charity has been defined to be a gift for a general public use. *Jones* v. *Williams*, Amb. 651 ; *Goodman* v. *Mayor of Saltosh*, 7 App. Cas. 633 : *Reg* v. *Comm.*
[illegible] *issioners* v. *Pemsel*, (1891) A. C. 531 ; *Com-*
[illegible] It includes relief of the aged, impotent and
[illegible] 177 : *Re Gosling*, 48 W. R. 300. A gift
[illegible] of Universities is included in the term. *Att. Gen* v. *Nash*, 2 Br C. C. 587 ; *Att Gen* v *Earl of Longdale*, 1 Sim. 105 ; see also 124 Ind. Cas 629=A. I R 1929 Pat. 723 An educational institution is not prevented from being a charity by the fact that it imparts instruction in a certain religious belief. *Dilworth* v. *Comm of Stamps*, (1899) A. C 99 ; *Brasdhaw* v. *Taskar*, 2 My & K. 221

Appointment and incorporation of Treasurer of Charitable Endowments.

3. (1) The "Local Government"† may appoint an officer of the Government by the name of his office to be Treasurer of Charitable Endowments for the territories subject to "such Local Government."†

(2) Such Treasurer shall, for the purposes of taking, holding and transferring movable or immovable property under the authority of this Act, be a corporation sole by the name of the Treasurer of Charitable Endowments for the territories subject to the Local Government, and, as such Treasurer, shall have perpetual succession and a corporate seal, and may sue and be sued in his corporate name.

[illegible] haritable Trusts Act, 1855 (18 & 19 Vict. c. 124)
[illegible] surer of Public Charities is abolished, and the
[illegible] being is styled the Official Trustee of the charity
[illegible] nd hold all such interest in land as in pursuance

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* In s. 1, sub-s. (2), the words "*Upper Burma and*" repealed by Act XIII of 1898 have been omitted here.

† The words within quotations have been substituted by Act 38 of 1920.

of an order of the Board is conveyed to or vested in him by any deed or assurance or otherwise. By the 18th section of the Charitable Trusts Act, 1855 and section 4 of the Charitable Trusts Act 1887 (50 & 51 Vict. c. 49), the Official Trustees of Charitable Funds are to have perpetual succession, and are to consist of such officers of the Board as the Board with the approval of the Treasury from time to time appoint. *Lewin on Trust, 12th Ed. p 1209.*

Orders vesting property in Treasurer.

4. (1) Where any property is held or is to be applied in trust for a charitable purpose, the Local Government, if it thinks fit, may, on application made as hereinafter mentioned, and subject to the other provisions of this section, order, by notification in the official Gazette, that the property be vested in the Treasurer of Charitable Endowments on such terms as to the application of the property or the income thereof as may be agreed on between the Local Government and the person or persons making the application, and the property shall thereupon so vest accordingly.

(2) When any property has vested under this section in a Treasurer of Charitable Endowments, he is entitled to all documents of title relating thereto.

(3) A Local Government shall not make an order under sub-section (1) for the vesting in a Treasurer of Charitable Endowments of any securities for money, except the following, namely:—

(*a*) promissory notes, debentures, stock and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;

(*b*) bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;

(*c*) stock or debentures of, or shares in, Railway or other Companies, the interest whereon has been guaranteed by the Secretary of State for India in Council;

(*d*) debentures or other securites for money issued by or on behalf of *any local authority in exercise of powers conferred by an Act of a legislature* established in British India;

(*e*) a security expressly authorised by any order which the "Local Government"* may make in this behalf.

(4) An order under this section vesting property in a Treasurer of Charitable Endowments shall not require or be deemed to require him to administer the property, or impose or be deemed to impose upon him the duty of a trustee with respect to the administration thereof.

Notes—Only securities issued by the Government of India, or by the Government of the United Kingdom of Great Britain and Ireland as well as bonds, debentures, and annuities charged by the Imperial Parliament on the revenues of India, etc., can vest in a Treasurer of Charitable Endowments But such a Treasurer of Charitable Endowments is not saddled with the duties of an ordinary trustee.

Schemes for administration of property vested in the Treasurer.

5. (1) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the Local Government, if it thinks fit, may settle a scheme for the administration of any property which has been or is to be vested in the Treasurer of Charitable Endowments, and may in such scheme appoint, by name or office, a person or persons, not being or including such Treasurer, to administer the property.

(2) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the Local Government may, if it thinks fit, modify any scheme settled under this section or substitute another scheme in its stead.

(3) A scheme settled, modified, or substituted under this section shall, subject to the other provisions of this section, come into operation on a day to

*The words within quotations have been substituted by Act 38 of 1920

be appointed by the Local Government in this behalf, and shall remain in force so long as the property to which it relates continues to be vested in the Treasurer of the Charitable Endowments, or until it has been modified or another such scheme has been substituted in its stead

(4) Such a scheme, when it comes into operation, shall supersede any decree or direction relating to the subject matter thereof, in so far as such decree or direction is in any way repugnant thereto, and its validity shall not be questioned in any Court, nor shall any Court give, in contravention of the provisions of the scheme or in any way contrary or in addition thereto, a decree or direction regarding the administration of the property to which the scheme relates.

(5) In the settlement of such a scheme effect shall be given to the wishes of the author of the trust so far as they can be ascertained, and, in the opinion of the Local Government, effect can reasonably be given to them.

(6) Where a scheme has been settled under this section for the administration of property not already vested in the Treasurer of Charitable Endowments, it shall not come into operation until the property has become so vested.

Notes—A scheme is to be settled for the administration of the property vested in the Treasurer Such a scheme is to be [illegible] sultation with the person making the applic[illegible] or substituted by another scheme on the [illegible] England the Board have power, when the c[illegible] purpose, to approve provisionally of new schemes of charities, varying from the original endowment, but which are to be submitted annually to Parliament for its ratification —*Lewin on Trust, 12th Ed p 1209*

Mode of applying for vesting orders and schemes.

6 (1) The application referred to in the two last foregoing sections must be made,—

(*a*) if the property is already held in trust for a charitable purpose, then by the person acting in the administration of the trust, or, where there are more persons than one so acting, then by those persons or a majority of them; and

(*b*) if the property is to be applied in trust for such a purpose, then by the person or persons proposing so to apply it.

(2) For the purposes of this section the executor or administrator of a deceased trustee of property held in trust for a charitable purpose shall be deemed to be a person acting in the administration of the trust.

Notes—An application under ss 4 and 5 may be made by a trustee or a majority of trustees where there are more trustees than one and where property is vested in trustees. The executors or administrators of a deceased trustee may also make an application under ss. 4 and 5.

Exercise by Governor General in Council of powers of Local Government.

7. (1) The Governor General in Council may exercise all or any of the powers conferred on the Local Government by sections 4 and 5.

(2) When the Governor General in Council has signified to the Local Government his intention of exercising any of those powers with respect to any property, that Government shall not, without his previous sanction, exercise them with respect thereto.

Notes.—The Governor-General can exercise the power of the Local Government in important cases.

Bare trusteeship of Treasurer.

8. (1) Subject to the provisions of this Act, a Treasurer of Charitable Endowments shall not, as such Treasurer, act in the administration of any trust whereof any of the property is for the time being vested in him under this Act.

(2) Such Treasurer shall keep a separate account of each property for the time being so vested in so far as the property consists of securities for money, and shall apply the property or the income thereof in accordance with the

provision made in that behalf in the vesting order under section 4 or in the scheme, if any, under section 5, or in both those documents.

(3) In the case of any property so vested other than securities for money, such Treasurer shall, subject to any special order which he may receive from the authority by whose order the property became vested in him, permit the persons acting in the administration of the trust to have the possession, management and control of the property, and the application of the income thereof, as if the property had been vested in them.

Notes.—The Treasurer of Charitable Endowments is bound to carry out the provisions of the scheme prepared under section 5. He is to keep an account of the trust property.

Annual publication of list of properties vested in Treasurer.

9. A Treasurer of Charitable Endowments shall cause to be published annually in the local official Gazette, at such time as the Local Government may direct, a list of all properties for the time being vested in him under this Act and an abstract of all accounts kept by him under sub-section (2) of the last foregoing section.

Notes.—This list is published for the information of the public.

Limitation of functions and powers of Treasurer.

10. (1) A Treasurer of Charitable Endowments shall always be a sole trustee, and shall not, as such Treasurer, take or hold any property otherwise than under the provisions of this Act, or subject to those provisions, transfer any property vested in him except in obedience to a decree divesting him of the property, or in compliance with a direction in that behalf issuing from the authority by whose order the property became vested in him.

(2) Such a direction may require the Treasurer to sell or otherwise dispose of any property vested in him, and, with the sanction of the authority issuing the direction, to invest the proceeds of the sale or other disposal of the property in any such security for money as is mentioned in section 4, sub section (3), clause (*a*), (*b*), (*c*), (*d*), or (*e*), or in the purchase of immovable property.

(3) When a Treasurer of Charitable Endowments is divested, by a direction of the Local Government or the Governor General in Council under this section, of any property, it shall vest in the person or persons acting in the administration thereof and be held by him or them on the same trusts as those on which it was held by such Treasurer.

Provision for continuance of office of Treasurer in certain contingencies.

11. If the office held by an officer of the Government who has been appointed to be a Treasurer of Charitable Endowments is abolished or its name is changed, the "Local Government"* may appoint the same or another officer of the Government by the name of his office to be such Treasurer, and thereupon the holder of the latter office shall be deemed for the purposes of this Act to be the successor in office of the holder of the former office.

Transfer of property from one Treasurer to another.

12. If by reason of an alteration of the limits of the territories subject to a Local Government, or for any other reason, it appears to the Governor-General in Council that any property vested in a Treasurer of Charitable Endowments should be vested in another such Treasurer, he may direct that the property shall be so vested, and thereupon it shall vest in that other Treasurer and his successors as fully and effectually for the purposes of this Act as if it had been originally vested in him under this Act.

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* The words within quotations have been substituted by Act 38 of 1920.

Power to frame forms and make rules.

13.* (1) The Governor-General in Council *may* prescribe forms for any proceedings under this Act and may make rules consistent with this Act for prescribing the Local Government which is to exercise the powers conferred by this Act in the case of property which is, or is situated, in territories subject to two or more Local Governments.

(2) The Local Government may make rules consistent with this Act for—

(*a*) prescribing the fees to be paid to the Government in respect of any property vested under this Act in a Treasurer of Charitable Endowments;

(*b*) regulating the cases and the mode in which schemes or any modification thereof are to be published before they are settled or made under section 5;

(*c*) prescribing the forms in which accounts are to be kept by Treasurers of Charitable Endowments and the mode in which such accounts are to be audited; and

(*d*) generally, carrying into effect the purposes of this Act.

Indemnity to Government and *Treasurer.*

14. No suit shall be instituted against the Government in respect of anything done or purporting to be done under this Act, or in respect of any alleged neglect or omissi[illegible] the Government under this Act, or in [illegible] to exercise, any power conferred by t[illegible] *any* suit be instituted against a Treasurer of Charitable *Endowments except* for divesting him of property on the ground of its not being subject to a trust for a charitable purpose, or for making him chargeable with or accountable for the loss or misapplication of any property vested in him, or the income thereof, where the loss or misapplication has been occasioned by or through his wilful neglect or default.

Notes.—By this section the Government and the Treasurer of Charitable *Endowments are exempt from all liabilities save and except where such liability* is incurred by his wilful neglect or default. The property of a hospital was vested in the Treasurer of the Charitable Endowments Act. The administration of the trust property vested in the hands of a committee. In a suit against the ex-officio secretary for a claim against the committee, *held, that the suit could not be filed* against the Secretary alone as representing the committee. *Ajodhia* v. *The City Magistrate of Lucknow*, 20 O. C. 333. This Act has nothing to do with a case where the claim is made in defiance of the trust and on a title paramount to the settlers. A. I. R. 1926 Oudh. 431=29 O. C 176=96 Ind. Cas. 47.

Saving with respect to Advocate General and Official Trustee.

15. Nothing in this Act shall be construed to impair the operation of section 111 of the Statute 53, George III, Chapter 155, or of any other enactment for the time being in force, respecting the authority of an Advocate General at a Presidency to act with res[illegible] Act No. XVII of 1864 (a[illegible] *respecting the vesting of* prop[illegible] rustee.

Notes.—53 George III, Chapter 155—The East India Company Act, 1853.
Act 17 of 1864.—See now Act II of 1913

16. General controlling authority of Governor-General in Council [*Repealed by Act 38 of 1920*].

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* The new section 13 has been substituted for the old one by Act 38 of 1920

THE CHILD MARRIAGE RESTRAINT ACT, 1929.

ACT No. XIX OF 1929.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 1ST OCTOBER, 1929.

An Act to restrain the solemnisation of child marriages.

WHEREAS it is expedient to restrain the solemnisation of child marriages; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Child Marriage Restraint Act, 1929.*

(2)* It extends to the whole of British India, including British Baluchistan and the Santhal Parganas.

(3) It shall come into force on the first day of April, 1930.

Notes.—The object of the Bill is two-fold. The main object, by declaring invalid the marriages of girls below 14 years of age, is to put a stop to such girls becoming widows. The second object, by laying down the minimum marriageable ages of boys and girls, is to prevent, so far as may be, their physical and moral deterioration by removing a principal obstacle to their physical and mental development.—*Statement of Objects and Reasons.* The Act applies to all classes and communities in British India. *Report of the Select Committee.*

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "child" means a person who, if a male, is under eighteen years of age; and if a female, is under fourteen years of age;

(*b*) "child marriage" means a marriage to which either of the contracting parties is a child;

(*c*) "contracting party" to a marriage means either of the parties whose marriage is thereby solemnised; and

(*d*) "minor" means a person of either sex who is under eighteen years of age.

Notes.—We considered a suggestion that the minimum age to determine whether a female is a child for the purpose of sub-clause (*a*) should be reduced to 11 and another suggestion that it should be reduced to 12 years. The Committee, however, were emphatically of opinion that any such reduction nullify the whole object of the Bill.—*Report of the Select Committee.*

Punishment for male adult below twenty one years of age marrying a child.

3. Whoever, being a male above eighteen years of age and below twenty-one, contracts a child-marriage shall be punishable with fine which may extend to one thousand rupees.

Notes.—The object of the bill as introduced in the Legislature was to [illegible] restraint upon th[illegible] broadly speaking, [illegible] to be invalid. T[illegible] has elicited a st[illegible] and on legal gr[illegible] performed. In our opinion these objections are at present [illegible] have accordingly acted upon a suggestion, which has been wide[illegible] Bill should effect its purpose of restraining child marriages, [illegible] such marriages to be invalid but by imposing punishments [illegible] pate in them.—*Report of the Select Committee.*

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* Substituted by Act VIII of 1930.

Punishment for male adult above twenty-one years of age marrying a child.

4. Whoever, being a male above twenty one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Notes—*Vide* notes under section 3. A trial under the Act may be summary, as it is permitted by s. 260 (1) (*a*) Cr. Pro. Code. The mere provision in s. 18 that the trial is to take place in District Magistrate's Court does not prevent trial from being summary. 35 Cr. L. J. 677=A. I. R. 1934 All. 331.

Punishment for solemnising a child marriage.

5. Whoever performs, conducts or directs any child marriage, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

Notes.—This section excludes betrothal ceremony which is a necessary preliminary to a marriage but which does not constitute a marriage without further ceremony This section only penalises the persons who actually officiate in that part of the ceremony which finally renders the marriage tie indissoluble. This section also exempts any person who has officiated at a child marriage but who can prove to the Court that he had taken reasonable precautions to satisfy himself that the contracting parties were over the minimum age. *Report of the Select Committee.* For the purpose of this section the Court must consider only the marriage ceremony. It is quite immaterial where, when or by whom the *tilak* ceremony is performed. 35 Cr. L J 1175=1934 A. L J 681=A I R. 1934 All. 829. Where, a man is punished for marrying a minor girl against these injunctive orders under order 39, rule 2 (3), he should be given an opportunity of establishing the plea that no notice of the order was served upon him A. I R. 1932 Cal. 719=137 Ind. Cas. 425. This section excludes those who are punishable under s. 3 or s. 4 or section 6. 28 N. L. R. 302=A. I R 1932 Nag 174. Sentence on priest or celebrant should be deterrent. A. I R. 1933 Pat. 471. Certificate by a person less qualified than that of Civil Surgeon to the effect that the girl is more than 14 years of age is not sufficient. 35 Cr L J 677=A I R. 1934 All. 331.

Punishment for parent or guardian concerned in a child marriage.

6. (1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment, which may extend to one month, or with fine which may extend to one thousand rupees, or with both :

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that, where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised.

Notes—"We have provided that the punishment of imprisonment shall not be inflicted in the case of a female parent or guardian ; and we rejected a proposal for the omission of the presumption contained in the second part of this clause, as we consider the presum[illegible] to enable the provisions of the clause to [illegible] f *Objects and Reasons.* Cases where, both [illegible] 28 N. L. R. 302=A. I. R 1932 Nag. 174. One who settles the match and gives away his daughter is guilty under this section. *Ibid* The case is not *ultra vires* in case of the Hindus, A. I. R. 1933 Pat. 471 Father giving minor daughter in marriage is guilty under s. 6 A. I. R. 1932 Nag. 174=28 N. L R 302=34 Cr. L. J. 311. This section covers cases even where one party is minor. *Ibid.*

Imprisonment not to be awarded for offences under section 3.

7. Notwithstanding anything contained in section 25 of the General Clauses Act, 1897,* or section 64 of the Indian Penal Code, † a Court sentencing an offender under section 3 shall not be competent to direct that, in default of payment of the fine imposed, he shall undergo any term of imprisonment.

Notes—"We have, therefore, provided separately in clause 3 for a fine of Rs. 1,000 for offenders above the age of fifteen years and under twenty-one; and in clause 7 we have made provision that imprisonment shall not be imposed on these offenders under any circumstances. Clause 4 relates to offenders above the age of twenty-one years."—*Report of the Select Committee.*

Jurisdiction under this Act.

8. Notwithstanding any thing contained in section 190 of the Code of Criminal Procedure, 1898,‡ no Court other than that of a Presidency Magistrate or a District Magistrate shall take cognizance of, or try, any offence under this Act.

Notes.—"We have added to them certain provisions of procedure which are designed to avoid risk of frivolus prosecutions and harassment. We consider these provisions to be very important safe-guards in a measure of social reform directed against a custom so long established and so widely prevalent as that of child marriage. It may be that in future these provisions may be abrogated and the penal provisons of the Act allowed to operate in the normal way, but, for the immediate future at least, we are strongly of opinion that we must go cautiously. In pursuance of this policy we have provided in clause 8 that only Courts of Presidency Magistrates and District Magistrates shall have jurisdiction in cases concerning child marriages."—*Report of the Select Committee.*

Mode of taking cognizance of offences.

9. No Court shall take cognizance of any offence under this Act save upon complaint made within one year of the solemnisation of the marriage in respect of which the offence is alleged to have been committed.

Notes—In order to avoid the risk of frivolous prosecutions and harassment, provision has been made that cognizance can be taken only upon complaint made within one year of the solemnisation of the marriage—*Report of the Select Committee.*

Preliminary inquiries into offences under this Act

10. The Court taking cognizance of an offence under this Act shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, 1898,‡ either itself make an inquiry under section 202 of that Code, or direct a Magistrate of the first class subordinate to it to make such inquiry.

Notes.—"In clause 10 we have laid down that the Court, unless it dismisses the complaint, shall in all cases make a preliminary inquiry under section 202 of the Code of Criminal Procedure, 1898"—*Report of the Select Committee.* A magistrate must hold preliminary inquiry 31 P L. R. 495=130 Ind. Cas 783=12 Lah. 383=A. I. R. 1931 Lah 56; but see A. I. R. 1934 Lah. 155=15 Lah. 63.

Power to take security from complainant.

11. (1) At any time after examining the complainant and before issuing process for compelling the attendance of the accused, the Court shall, except for reasons to be recorded in writing, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under section 250 of the Code of Criminal Procedure, 1898‡; and if such security is not furnished within such reasonable time as the Court may fix, the complaint shall be dismissed.

(2) A bond taken under this section shall be deemed to be a bond taken under the Code of Criminal Procedure, 1898,‡ and Chapter XLII of that Code shall apply accordingly.

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* X of 1897. † XLV of 1860. ‡ V of 1898.

Notes – In order to avoid the risk of frivolous prosecutions and harassment in this section, the Select Committee have added a provision requiring the complainant to give security for the payment of any compensation that may be awarded against him under section 250 of the Criminal Procedure Code — *Report of the Select Committee.* Where a complaint is made by a judicial officer, he need not execute a bond under this section 13 Pat L. T. 791 = A. I. R. 1933 Pat. 87 Provisions of this section are mandatory. Failure to record reasons for not requiring complainant to execute bond is material irregularity and is not curable by s. 537 Cr. Pro. Code = A. . R. 1933 Cal. 433 = 37 C. W. N. 626 = 143 Ind. Cas. 279.

THE INDIAN CHRISTIAN MARRIAGE ACT, 1872.

ACT NO. XV OF 1872.*

RECEIVED THE G G.'S ASSENT ON THE 18TH JULY, 1872.

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion; It is hereby enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Christian Marriage Act, 1872."

Extent.

It extends to the whole of British India, and, so far only as regards Christian subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.†

Enactments repealed.

2. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment.

And all appointments made, licenses granted, consents given, certificates issued, and other things duly done under any such enactment shall be deemed to be respectively made, granted, given, issued and done under this Act.

For clause xxiv of section 19 of the Court fees Act, 1870,‡ the following shall be substituted:—

"xxiv. Petitions under the Indian Christian Marriage Act, 1872, sections forty-five and forty eight."

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"Church of England" and "Anglican" mean and apply to the Church of England as by law established;

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* Act XV of 1872 has been declared, under the Schedule Districts Act (XIV of

Pargana Dhalbhum

of India, 1881, pt. I, p. 504.

The North-Western Provinces Tarai......Ditto 1876, pt I, p 505.

It has been declared in force in the Santhal Parganas by Reg. (III of 1872), s. 3

Arakan Hill District by Reg I of

ian States) by Act (XIII of 1898), s. 4;

s. 3.

XVI of 1874 have been omitted.

‡ VII of 1870.

"Church of Scotland" means the Church of Scotland as by law established ;

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head ;

"Church" includes any chapel or other building generally used for public Christian worship ;

"Minor" means a person who has not completed the age of twenty-one years, and who is not a widower or a widow ;

"Native State" means the territories of any Native Prince or State in alliance with Her Majesty ;

the expression "Christians" means persons professing the Christian religion ; and the expression "Native Christians" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts ;

"Registrar General of Births, Deaths and Marriages" means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886,*

Notes —The mere fact that a person was baptized as an infant or that he is attending a Christian School or he is dressing as a Christian is not sufficient to treat him as "a person professing the Christian religion." One who performs "*Devika puja*" at the time of his marriage cannot be said to profess the Christian religion. 45 Ind. Cas. 589=40A. 393=16 A. L. J. 414=19 Cr. L. J. 615. Age of consent is age fixed by law in England at the time of marriage. 55A 243=1933 A. L. J. 168=A. I. R. 1933 All. 135.

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

Marriages to be solemnized according to Act.

4. Every marriage between persons, one or both of whom is "or are" † a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section , and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

Notes —Distinction that marriage gravely unlawful yet valid is unknown to civil law. A. I. R 1933 All. 122=144 Ind Cas. 906=55A. 185 High Court has jurisdiction to try cases under ss. 4 and 5 144 Ind. Cas. 906=55 A 185. A mixed marriage celebrated by the Catholic Church otherwise valid is not invalidated for want of banns. 56A. 428=1934 A. L J 1129=A I. R 1934 All. 273.

Persons by whom marriages may be solemnized.

5. Marriages may be solemnized in India—

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister ;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland ;

(3) by any Minister of Religion licensed under this Act to solemnize marriages ;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act ;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

Notes—Section 5 deals with necessary ceremonies before performance of marriage. 144 Ind. Cas 906=55A. 185=A. I R 1933 All 122.

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* ... [illegible] ...ths and Marriages Registration

† ... [illegible] Act XII of 1891, Sch. II.

Grant and revocation of licenses to solemnize marriage.

6.* The Local Government, so far as regards the territories under its administration, and the Governor General in Council, so far as regards any Native State, may, by notification in the local official Gazette or in the *Gazette of India*, as the case may be, grant licenses to Ministers of Religion to solemnize marriages within such territories and State, respectively, and may, by a like notification, revoke such licenses.

Marriage Registrars.

7. The Local Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration.†

Senior Marriage Registrar.

Where there are more Marriage Registrars than one in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar.

Magistrate when to be Marriage Registrar.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the District shall act as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy.

Marriage Registrars in Native States.

8. The Governor General in Council may, by notification in the *Gazette of India*, appoint any Christian, either by name or as hold [illegible] be a Marriage [illegible] or place within the territories of any Nati [illegible] *Her* Majesty.‡

The Governor General in Council may, by like notification, revoke any such appointment.

Licensing of persons to grant certificates of marriage between Native Christians.

9. The Local Government or (so far as regards any Native State) the Governor General in Council may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

Time for solemnizing marriage.

10. Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening:

Exceptions.

Provided that nothing in this section shall apply to—

(1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop

* S. 6 has been substituted by Act II of 1891, s. 1.

† See *Bombay Government Gazette*, Nov. 21, 1872, p. 1203, *British Burma Gazette*, June 28, 1873, p. 138.

‡ See *Gazette of India*, June 14, 1873, p. 550, Aug. 9, 1873, p. 712.

of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license, "or

(3) a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland."*

Place for solemnizing marriage.

11. No Clergyman of the Church of England shall solemnize a marriage in any place other than a church "where worship *is generally held according to the forms* of the Church of England,"†

unless there is no "such"‡ church within five miles distance by the shortest road from such place, or

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

Fee for special license.

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

Notice of intended marriage.

12. Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein—

(*a*) the name and surname, and the profession or condition, of each of the

each of them,

each has dwelt there, and

(*d*) the church or private dwelling in which the marriage is to be solemnized:

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

Publication of such notice

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

Return or transfer of notice.

But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

Notice of intended marriage in private dwelling.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving *the notice* prescribed in section 12, shall forward it to the Marriage Registrar of the District, who shall affix the same to some conspicuous place in his own office.

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* In s. 10, cl (3) has been added by Act II of 1891, s. 2.
† In s. 11 the words quoted have been inserted by Act II of 1891, s. 3.
‡ The word "such" has been inserted by Act II of 1891, s. 3.

Sending copy of notice to Marriage Registrar when one party is a minor.

15. When one of the persons intending marriage is a minor,* every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of sections 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

Procedure on receipt of notice.

16. The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said *notice to be sent to each of the other Marriage Registrars in the same district,* who shall likewise publish the same in the manner above directed.

Issue of certificate of notice given and declaration made.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made :

Proviso. Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister ;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue ; and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter† mentioned, by any person authorized in that behalf.

Declaration before issue of certificate.

18. The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(*a*) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage,

and, when either or both of the parties is or are a minor or minors,

(*b*) that the consent or consents required by law‡ has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

Consent of father, or guardian, or mother.

19. The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

Power to prohibit by notice issue of certificate.

20. Every person whose consent to a marriage is required under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

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* See Act IX of 1875. † See s. 20. ‡ See s. 19.

Procedure on receipt of notice

21. If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage, until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition, or until the said notice is withdrawn by the person who gave it.

Issue of certificate in case of minority.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 191, has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

Issue of certificates to Native Christians.

23. When any Native Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands.

Form of certificate

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect.

Solemnization of marriage.

25. After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt:

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

Certificate void if marriage not solemnized within two months.

26. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void,

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

PART IV.

Registration of Marriages solemnized by Ministers of Religion.

Marriages when to be registered.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act, shall be registered in manner hereinafter prescribed.

Registration of marriages solemnized by Clergymen of Church of England.

28. Every Clergyman of the Church of England shall keep a register of marriages and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act

Quarterly returns to Archdeaconry.

29. Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has

any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate.

Contents of returns.

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

The said Registrar upon receiving the said returns shall send one copy thereof to the "Registrar-General of Births, Deaths and Marriages."*

Registration and returns of marriages solemnized by Clergymen of Church of Rome.

30. Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

and such person shall forward quarterly to be "Registrar-General of Births, Deaths and Marriages"* returns of the entries of all marriages registered by him during the three months next preceding.

Registration and returns of marriages solemnized by Clergymen of Church of Scotland.

31. Every Clergyman of the Church of Scotland shall keep a register of marriages,

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the "Registrar-General of Births, Deaths and marriages,"* through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages

Certain marriages to be registered in duplicate.

32. Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall, immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same; (that is to say) in a marriage register-book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

Entries of such marriages to be signed and attested.

33. The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

Certificate to be forwarded to marriage Registrar, copied and sent to Registrar General.

34. The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book and send it, within one month from the time of the solemnization, to the Marriage Registrar of the district in which the marriage was solemnized,

*The words quoted were substituted for the words "Secretary to the Local Government" by Act (VI of 1886) s. 30, cl. (*b*).

or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the "Registrar-General of Births, Deaths and Marriages."*

Copies of certificates to be entered and numbered.

35. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

Registrar to add number of entry to certificate, and send to *Registrar General.*

36. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the "Registrar-General of Births, Deaths, and Marriages."*

Registration of marriages between Native Christians by any such person, Clergyman or Minister of Religion as is referred to in *Cl.* (1), (2) or (3) of s 5. Custody and disposal of register-book.

37. When any marriage between Native Christians is solemnized "by any such person, Clergyman or Minister of Religion as is referred to in clause (1), clause (2) or clause (3) of section 5"† the person solemnizing the same shall, instead of proceeding in the manner provided by sections 28 to 36, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Whoever has the control of the book at the time when it is filled shall send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the "Registrar General of Birth, Deaths and Marriages,"* to be kept by him with the records of his office.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

Notice of intended marriage before Marriage Registrar

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt;

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

*The words quoted were substituted for the words "Secretary to the Local Government" by Act (VI of 1886) s. 30, cl (*b*).
†Substituted by Act XVIII of 1928.

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

39. Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

Publication of notice.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty four hours after the receipt by him of the notice of s[illegible] [illegible]rwise, a copy of such notice to each of the [illegible] the same district, who shall likewise affix [illegible] in his own office.

Notice to be filed and copy entered in Marriage Notice Book.

40. The Marriage Registrar shall file all such notices and keep them with the records of his office,

and shall also forthwith enter a true copy of all such notices in a book to be [illegible] he Local Government, and to be called [illegible] be open at all reasonable times, without fee, [illegible] the same.

41. If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given, and of such oath having been made:

Certificate of notice given and oath made.

Proviso. Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired, and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

42. The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath*—

Oath before issue of certificate.

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(b) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his, or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,

(c) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

43. When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been

Petition to High Court to order certificate in less than fourteen days.

* See Act X of 1897, s. 3, cl. (36).

given, directing him to issue his certificate before the expiration of e said fourteen days required by section 41.

Order on petition.

And, on sufficient cause being shown, the said Judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required.

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

Consent of father or guardian.

44. The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor;

Protest against issue of certificate.

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized.

Effect of protest

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it.

Petition where person whose consent is necessary is insane, or unjustly withholds consent

45. If any person whose consent is necessary to any marriage under this Part is of unsound mind,

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombay, to a Judge of [illegible] t within any of the said towns, then to the [illegible]

Procedure on petition.

And the said Judge of the High Court [illegible] may exam[illegible] summary way:

and, if upon examination, such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage;

and if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden

Petition when Marriage Registrar refuses certificate.

46. Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge.

Procedure on petition.

The said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such Judge of the High Court or District Judge, as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

Petition when Marriage Registrar in Native State refuses certificate.

47. Whenever a Magistrate Registrar resident in any Native State refuses to issue his certificate, either of the parties intending marriage may apply by petition to the Governor-General in Council, who shall decide thereon.

Such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith.

Petition when Registrar doubts authority of person forbidding.

48. Whenever a Marriage Registrar, acting under the provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorised by law so to do, the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or, if such district be not within any of the said towns, then to the District Judge.

Procedure on petition.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case;

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden.

Reference when Marriage Registrar in Native State doubts authority of person forbidding.

Whenever a Marriage Registrar appointed under section 8 to act within any Native State is not satisfied that the person forbidding the isssue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto, to the Governor General in Council.

Procedure on reference.

If it appears to the Governor General in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor General in Council shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue of the certificate had not been forbidden.

Liability for frivolous protest against issue of certificate.

49. Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriago Registrar, under section 44, or a Judge of the High Court or the District Judge, under section 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the persons against whose marriage such protest was entered.

Form of certificate.

50. The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act annexed or to the like effect.

and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

Solemnization of marriage after issue of certificate.

51. After the issue of the certificate of the Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect :—

"I do solemnly declare that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D.*"

And each of the parties shall say to the other as follows or to the like effect : —"I call upon these persons here present to witness that I, *A. B.* do take thee, *C. D.* to be my lawful wedded wife (*or husband*)."

When marriage not had within two months after notice, new notice required.

52. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon,

shall be void ;

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

Marriage Registrar may ask for particulars to be registered.

53. A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

Registration of marriage solemnized under Part V.

54. After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate ; that is to say, in a marriage-register-book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

The entry of such marriage in both the certificate and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

Certificates to be sent monthly to Registrar General.

55. The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month to the "Registrar General of Births, Deaths and Marriages."*

* Substituted by Act VI of 1886.

Custody of register-book.

The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the "Registrar General of Births, Deaths and Marriages,"* to be kept by him with the records of his office.

Officers to whom Registrars in Native States shall send certificates.

56. The Marriage Registrars in Native States shall send the certificates mentioned in section 54 to such officers as the Governor General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Registrars to ascertain that notice and certificate are understood by Native Christians.

57. When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands;

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate.

Native Christians to be made to understand declarations.

58. When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

Registration of marriages between Native Christians.

59. The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise.

PART VI.†

MARRIAGE OF NATIVE CHRISTIANS.

On what conditions marriages of Native Christians may be certified.

60. Every marriage between Native Christians applying for a certificate shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise:—

(1) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years;

(2) neither of the persons intending to be married shall have a wife or

"I call upon these persons here present to witness that I, *A. B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C. D.* to be my lawful wedded wife (*or husband*)," or words to the like effect:

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the

* Substituted by Act VI of 1886.

† As to the validation of past marriages solemnized under Part VI between persons of whom one only was a Native Christian and penalty for solemnizing such marriages under Part VI in future, see Act II of 1892

intended marriage, or unless it appears that there is no person living authorized to give such consent.

Grant of certificate.

61. When, in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

Keeping of register-book and deposit of extracts therefrom with Registrar General

62.* (1) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the Local Government by which he was licensed may from time to time prescribe, a register-book of all marriages solemnized under this Part in his presence, and shall deposit in the office of the Registrar General of Births, Deaths and Marriages for the territories under the administration of the said Local Government, in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

(2) Where the person keeping the register-book was licensed as regards a Native State by the Governor General in Council, references in sub section (1) to the Local Government therein mentioned shall be read as references to the Local Government to whose Registrar General of Births, Deaths and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24, sub-section (2), of the Births, Deaths and Marriages Registration Act, 1886 †

Searches in register-book and copies of entries

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of an entry therein.

Books in which marriages of Native Christians under Part I or Part II are registered.

64. The provisions of sections 62 and 63, as to the form of the Register book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section 37

Part VI not to apply to Roman Catholics Saving of certain marriages.

65. This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No XXV of 1864, ‡ previous to the twenty third day of February, 1865.

PART VII.

PENALTIES

False oath, declaration, notice, or certificate for procuring marriage.

§66. Whoever, for the purpose of procuring a marriage or license of marriage, intentionally,—

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* S 62 has been substituted by Act II of 1891, s. 4 † VI of 1886.

‡ Act XXV of 1864 was repealed by Act V of 1865, which was repealed by this Act (XV of 1872).

§ S 66 has been substituted by Act II of 1898, s. 5.

(*a*) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,

(*b*) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code* with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine.

Forbidding by false personation, issue of certificate by Marriage Registrar.

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code.*

Solemnizing marriage without due authority.

†[**68.** Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes or professes or solemnize in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years, or upwards) with transportation for a term of not less than seven years and not exceeding ten years,

or, if the offender is an European or American, with penal servitude according to the provisions of Act XXIV of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts*),‡

and shall also be liable to fine.]

Notes.—There is no express prohibition preventing a person professing Christianity from doing violence to his faith and marrying a non-Christian, by a non-Christian ceremony This section does not make it penal for a professing Christian to marry by a ceremony which is void under s 4 40A. 393=16 A. L. J. 414= 19 Cr. L. J 615=45 Ind. Cas. 519. But where marriage between Hindu and Christian is performed by Hindu, an offence under this section is committed. 40 M. 1030=33 M. L. J. 113=41 Ind. Cas. 664.

Solemnizing marriage out of proper time, or without witnesses.

69. Whoever knowingly and wilfully solemnizes a marriage between persons, one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Saving of marriages solemnized under special license.

This section does not apply to marriages solemnized under special licenses [illegible] Diocese
[illegible] perform-
[illegible] ...ing and
[illegible] Rome, when he has received
[illegible] ...ed in section 10.
[illegible] ...ized by a Clergyman of the
Church of Scotland according to the rules, rites, ceremonies, and customs of the Church of Scotland.

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* XLV of 1860.

† S. 68 has been substituted by Act II of 1891, s. 6.

‡ In s 68, as amended by Act II of 1891, certain words, repealed by Act XII of 1891, Sch. I. have been omitted.

§ In s. 69 the last para has been added by Act II of 1891, s. 7.

Solemnizing, without notice or within fourteen days after notice, marriage with minor.

70. Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Issuing certificate, or marrying without publication of notice;

71. *A Marriage Registrar under this Act,* who commits any of the following offences :—

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act ;

marrying after expiry of notice;

(2) [after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage ;]*

solemnizing marriage with minor within fourteen days without authority of Court, or without sending copy of notice;

(3) solemnizes, without any order of a competent Court authorising him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the District than one, and if he himself be not the Senior Marriage Registrar ;

issuing certificate against authorized prohibition.

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof,

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Issuing certificate after expiry of notice, or, in case of minor *within fourteen days after* notice, or against authorized prohibition.

72. Any Marriage Registrar knowingly and willfully issuing any certificate for marriage after the expiration of "two"† months after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 165 of the Indian Penal Code.‡

Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome)

73. Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

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* In s. 71, cl (2), has been substituted by Act II of 1891, s. 8.

† In s. 72 the word "two" has been substituted for the word "three" by Act II of 1891, s. 8.

‡ XLV of 1860.

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that Church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies, and customs of that Church,

Issuing certificate or marrying, without publishing notice, or after expiry of certificate ;

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him :

issuing certificate for, or *solemnizing, marriage with* minor, within fourteen days after notice ;

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district :

issuing certificate authorizedly forbidden ;

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue :

solemnizing marriage authorizedly forbidden.

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

Unlicensed person granting certificate pretending to be licensed.

74. Whoever, not being licensed to grant a certificate of marriage under Part VI. of this Act, grant such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

"Whoever, being licensed to grant certificates of marriage under Part VI of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees."*

Destroying or falsifying register-books.

75. Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Limitation of prosecutions under Act.

76. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

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* This paragraph was added by Act 2 of 1891.

PART VIII.

Miscellaneous.

What matters need not be proved in respect of marriage in accordance with Act.

77. Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely :—

(*1*) Any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law :

(*2*) The notice of the marriage :

(*3*) The certificate or translation thereof :

(*4*) The time and place at which the marriage has been solemnized :

(*5*) The registration of the marriage.

Correction of errors.

78. Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made

And in case such certificate has been already sent to the "Registrar General of Births, Deaths and Marriages,"* such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

Searches and copies of entries.

79. Every person solemnizing a marriage under this Act, and hereby required to register the same,

and every Marriage Registrar or "Registrar General of Births Deaths, and Marriages"* having the custody for the time being of any register of marriages, or of any certificate, or duplicate or copies of certificate under this Act,

shall, on payment of the proper fees at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate, or copies, and give a copy under his hand of any entry in the same.

Certified copy of entry in marriage-register, &c., to be evidence.

80. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of an entry

ficate or duplicate, shall be to be so entered, or of the further proof of such register respectively, or of such copy.

Notes.—Entry in marriage register is admissible. 141 Ind. Cas. 284=26 S. L. R. 423=A. I. R. 1933 Sind. 27.

Certificates of certain marriages for Secretary of State.

†[**81.** The Registrar General of Births, Deaths and Marriages and the officers appointed under section 56 shall, at end of every quarter in each year, select, from the certificates of marriages forwarded to them, respectively, during such quarter, the certificates of the marriages of which the Governor-General in Council may desire that evidence shall be transmitted to

* The words quoted have been substituted by Act VI of 1886 s 30, cl. (b).

† Section 81 has been substituted for the old section by Act 13 of 1911.

England, and shall send the same certificates, signed by them respectively, to the Secretary of State for India.]

Local Government to prescribe fees.

82. Fees shall be chargeable under this Act for—

receiving and publishing notices of marriages :

issuing "certificates for marriage"* by Marriage Registrars, and registering marriages by the same ;

entering protest against, or prohibitions of, the issue of "certificates for marriage"* by the said Registrars ;

searching register-books or certificates, or duplicates of copies thereof ;

giving copies of entries in the same under sections 63 and 79.

The Local Government shall fix the amount of such fees respectively, †

and may from time to time vary or remit them either generally or in special cases, as to it may seem fit.

Power to make rules

83. The Local Government may make rules in regard to the disposal of the fees mentioned in section 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act ‡

Power to prescribe fees and rules for Native States.

84. The powers conferred on the Local Government by sections 82 and 83 may, so far as regards Native States, be exercised by the Governor-General in Council. §

Power to declare who shall be District Judge.

85. The Local Government may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge ‖

Powers and functions exercisable as regards Native States.

¶[86. (1) The powers and functions exercisable by the Governor General in Council under sections 6, 8, 9, 47, 48, 56, and 84, shall so far as regards any Native State which is within the political charge of a Local Government, be exercised by that Local Government. The exercise under this section by any Local Government of powers and functions under sections 6, 8, 9, and 56 shall be by notification in the local official Gazette.

(2) The powers and functions exercisable under this Act by the Governor-General in Council may be delegated to and exercised by such officers as he may from time to time appoint in this behalf].

Saving of Consular marriages.

87. Nothing in this Act applies to any marriage performed by any Minister, Consul or Consular Agent between subjects of the State which he represents and according to the laws of such State.

'Non-validation of marriages within prohibited degrees.

her to enter into.

Notes.—This Act does not deal with objections to validity of marriage. Personal law is that applicable to religious community. 124 Ind Cas. 776.

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* The words "certificates for marriages" have been substituted by the words "certificates of marriages" and also for the words "Marriage certificates" by the Repealing and Amending Act (1 of 1903) Sch. II, pt. II.

† Bombay Government Gazette, 1873 p 117 ; N. W. Provinces Gazette, 1872, , 1875, pt. II, p. 133.

W. Provinces, Gazette

Sep 21, 1873, p. 1088 ; Punjab Gazette, 1873, p. 74.

¶ Section 86 has been added by Act 38 of 1920.

SCHEDULE I.

(*See sections 12 and 38.*)

NOTICE OF MARRIAGE.

To a minister [*or* Registrar] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
James Smith.	*Widower.*	*Carpenter*	*Of full age*	*16, Clive Street*	*23 days*	*Free Church of Scotland Church, Calcutta*	
Martha Green.	*Spinster.*	......	*Minor.*	*20, Hastings Street.*	*More than a month.*		

Witness my hand, this day of *seventy-two*

(*Signed*) *JAMES SMITH.*

[The *italics* in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE II.

(*See sections 24 and 50*).

CERTIFICATE OF RECEIPT OF NOTICE.

I, , notice was duly entered in my between the parties therein named one of the parties (that is to say):—

Names.	Condition	Rank or profession.	Age	Dwelling place	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized	District in which the other party resides, when the parties dwell in different districts
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	....	*Minor.*	*20, Hastings Street.*	*More than a month.*		

and that the declaration, "or oath"* required by section 17 or 41 of The Indian Christian Marriage Act, 1872,† has been duly made by the said (*James Smith*).

Date of notice entered } The issue of this certificate has not been prohibited by any person authorized to forbid the issue thereof.
Date of certificate given }

Witness my hand, this day of *seventy-two.*

(*Signed*).

This certificate will be void, unless the marriage is solimnized on or before the day of .

[The *italics* in the schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

* The words "or oath" have been inserted by the Repealing and Amending Act (I of 1903), s. 3.

† This Act XV of 1872.

SCHEDULE III.

*(See sections 28 and 31.)**

FORM OF REGISTER OF MARRIAGES.

Quarterly Returns of Marriages for

The Archdeaconry of ... { *Calcutta.* / *Madras.* / *Bombay.* }

I,——, Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } as made and transmitted to me for the quarter commencing the day of ending the day of in the year of Our Lord

[*Signature of Registrar.*]

Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay.* }

MARRIAGES solemnized at { *Allahabad,* / *Barrackpore,* / *Barelly,* / *Calcutta, etc., etc.* }

WHEN MARRIED			NAMES OF PARTIES											
Year.	Month.	Day.	Christian.	Surname	Age.	Condition	Rank or profession.	Residence at the time of marriage	Father's name and surname	By banns or license.	Signatures of the parties	Signatures of two or more witnesses present	Signature of the person solemnizing the marriage.

*In Sch. III. for "(See section 28)" the words "(See sections 28 and 31)" have been inserted by Act XII of 1891, Sch. II.

SCHEDULE IV.

(*See sections 32 and 54.*)

MARRIAGE REGISTER BOOK.

Number.	When married			Names of Parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage	Father's name and surname.
	Day	Month.	Year.	Christian name	Surname					
1				*James*	*White*	26 Years	*Widower*	*Carpenter*	*Agra ...*	*William White.*
				Martha	*Duncan*	17 Years	*Spinster*	...	*Agra ...*	*John Duncan.*

Married in the

This marriage was solemnized between us { *James White,* / *Martha Duncan,* } in the presence of us { *John Smith* / *John Green* }

CERTIFICATE OF MARRIAGE.

Number.	When Married.			Names of Parties		Age	Condition	Rank or profession	Residence at the time of marriage	Father's name and surname.
	Day.	Month	Year.	Christian Name.	Surname.					
1				*James*	*White*	26 Years	*Widower*	*Carpenter.*	*Agra ...*	*William White.*
				Martha	*Duncan*	17 Years	*Spinster*	......	*Agra...*	*John Duncan.*

Married in the

This marriage was solemnized between us { *James White,* / *Martha Duncan,* } in the presence of us { *John Smith* / *John Green* }

SCHEDULE V.

(*See section 2*)

ENACTMENTS REPEALED.

Number and year.	TITLE.	Extent of Repeal.
Statute 58 Geo 3 chap. 84.	An Act to remove Doubts as to the Validity of certain Marriages had and solemnized within the British territories in India.	The whole.
Statute 14 and 15 Vict., chap 40.	An Act for Marriages in India ...	The whole.
Act No. V of 1852	An Act for giving effect to the provisions of an Act of Parliament, passed in the 15th year of the reign of Her present Majesty, intituled "An Act for Marriages in India."	So much as has not been repealed.
Act No V of 1865	The Indian Marriage Act, 1865. ...	The whole Act, except so far as it relates to the Straits Settlements.
Act No. XII of 1866	An Act [illegible] 1865, and [illegible] Trimulgerry and Aurungabad.	The whole.

THE INDIAN COFFEE CESS ACT, 1935.

ACT NO. XIV OF 1935.

[PASSED BY THE INDIAN LEGISLATURE]

Received the assent of the Governor-General on the 2nd November, 1935.

An Act to provide for the creation of a fund for the promotion of the cultivation, manufacture and sale of Indian Coffee.

WHEREAS it is expedient to provide for the creation of a fund to be expended by a Committee specially constituted in this behalf for the promotion of the cultivation, manufacture and sale of Indian coffee ; It is hereby enacted as follows :—

[illegible] in South India have [illegible] mposing a cess on [illegible] ement and develop- [illegible] the coffee-growing areas in favour of this pro- [illegible] ents of Madras, Coorg, [illegible] nt of India have acce[illegible] impose on coffee exp[illegible] cwt. The proceeds [illegible] the interest of the coffee-growing industry by a thoroughly representative committee. In view of the approaching separation of Burma from India, the Government of Burma desire that Burma should be excluded from the proposed legislation The Government of India have accepted the view of the Local Government and have excluded that province from the scope of the Act.—*Statement of Objects and Reasons*

Short title and extent.

1. This Act may be called the Indian Coffee Cess Act, 1935.

(2) It extends to the whole of British India except Burma.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "coffee cess" means the customs duty imposed by section 3 and leviable under the Sea Customs Act, 1878,* or under the Land Customs Act, 1924,† as the case may be ;

(2) "Collector" means a Customs-collector as defined in clause (c) of section 3 of the Sea Customs Act 18[illegible],* or a Collector of Land Customs as defined in clause (c) of section 2 of the Land Customs Act, 1924,† as the case may be ; and

(3) "Committee" means the Indian Coffee Cess Committee constituted under section 4.

Imposition of coffee cess

3. A customs duty shall be levied on all coffee produced in India and taken by sea or by land to any place beyond the limits of British India or to Burma at the rate of one rupee per hundred weight or at such lower rate as the Governor General in Council may, on the recommendation of the Committee, by notification in the *Gazette of India* provide

Constitution of Indian Coffee Cess Committee.

4 (1) The Governor General in Council shall constitute a Committee consisting of the following members to receive and expend the proceeds of the coffee cess, namely :—

(*i*) five persons representing respectively the agricultural departments of the Local Governments of Madras and Coorg and of the Governments of the States of Mysore, Travancore and Cochin, nominated, respectively, by those Governments ;

(*ii*) eleven persons representing [illegible]

(*a*) three persons nominated [illegible]

(*b*) two persons nominated [illegible]s and Coorg, respectively ;

(*c*) three persons nominated by the United Planters' Association of Southern India ; and

(*d*) three persons nominated by the Coffee Growers' Association ;

(*iii*) three persons representing trade interests nominated by the Governor General in Council ; and

(*iv*) one person representing the Imperial Council of Agricultural Research nominated by the Governor General in Council.

(2) The Governor General in Council shall publish in the *Gazette of India* the names of all members of the Committee.

Vacancies.

5. (1) If any authority or body fails to make within a reasonable time any nomination which it is entitled to make under section 4, the Governor General in Council may himself nominate a member to fill the vacancy.

(2) Where a member of the Committee dies, resigns, ceases to reside in India or becomes incapable of acting, the Governor General in Council may, on the recommendation of the authority or body which is entitled to make the first nomination under section 4, or, where such recommendation is not made within a reasonable time, then on his own initiative, nominate a person to fill the vacancy.

(3) No act done by the Committee shall be questioned on the ground merely of the existence of any vacancy in, or any defect in, the constitution of the committee.

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* VIII of 1878. † XIX of 1924.

Incorporation of the Committee.

6. The Committee so constituted shall be a body corporate by the name of the Indian Coffee Cess Committee, having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract and shall by the said name sue and be sued.

Chairman, sub-committees and executive officers.

7. The Committee shall elect a chairman from amongst its members, and may appoint such sub-committees and executive officers as may be necessary for the efficient performance of the duties imposed upon it by this Act.

Application of proceeds of coffee cess.

8. (1) On the last day of each month, or as soon thereafter as may be convenient, the Collector shall pay to the Committee the proceeds of the coffee cess recovered during that month, after deduction of the expenses, if any, for collection and recovery.

(2) The said proceeds and any other monies received by the Committee in this behalf shall be applied to meeting the expenses of the Committee and the cost of such measures as it may consider advisable to undertake for promoting the sale and increasing the consumption in India and elsewhere of coffee produced in India and also for promoting agricultural and technological research in the interest of the coffee industry in India.

Refund of and exemption from coffee cess.

9. The Central Board of Revenue constituted under the Central Board of Revenue Act, 1924,* may make rules providing, on such conditions as may be specified in the rules, for—

(*a*) the refund of the coffee cess levied where coffee is exported by land and subsequently imported into India; and

(*b*) the export by land, without payment of the coffee cess, of coffee which is subsequently to be imported into India.

Keeping and auditing of accounts.

10. (1) The Committee shall keep accounts of all monies received and expended under section 8.

(2) Such accounts shall be examined and audited annually by auditors appointed in this behalf by the Governor General in Council; and such auditors shall have power to disallow any item which has, in their opinion, been expended otherwise than in pursuance of the purposes of this Act.

(3) If any item is disallowed, an appeal shall lie to the Governor General in Council, whose decision shall be final.

Dissolution of Committee.

11. The Governor General in Council may, by notification in the *Gazette of India*, declare that, with effect from such date as [illegible] the Committee shall be dissolved, [illegible] unds and other property vested in the [illegible] this Act shall be deemed to have been repealed.

Rules.

12. (1) The Governor General in Council may, after consulting the Committee, by notification in the *Gazette of India*, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the term of office of the members of the Committee and the circumstances in which, and the authority by which, members may be removed;

* V of 1924.

(*b*) the conduct of business by the Committee and the number of members which shall form a quorum at meetings ;

(*c*) the maintenance by the Committee of a record of all business transacted and the submission of copies thereof to the Governor General in Council ;

(*d*) the preparation of annual estimates of receipts and expenditure ; and

(*e*) the form of accounts to be kept and the publication of an abstract of such accounts with the report of the auditor thereon.

Bye-laws.

13. The Committee may, with the previous sanction of the Governor General in Council, make bye-laws consistent with this Act and with the rules made thereunder to provide for all or any of the following matters, namely :—

(*a*) the procedure to be followed at meetings of the Committee ;

. members of the Committee ;

, and dismissal of officers and servants of

. abolition of appointments of such officers and servants ;

(*d*) the grant of pay and leave to such officers and servants ; and

(*e*) any other matter in respect of which bye-laws may be made under this Act or rules made thereunder.

THE INDIAN COINAGE ACT, 1906.

ACT NO. III OF 1906.

[PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.]

Received the assent of the Governor-General on the 2nd March, 1906.

An Act to consolidate and amend the law relating to Coinage and the Mint.

WHEREAS it is expedient to consolidate and amend the law relating to Coinage and the Mint ; It is hereby enacted as follows :—

Preliminary.

Short title and extent.

1. (1) This Act may be called the Indian Coinage Act, 1906 ; and

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Sonthal Parganas and the Pargana of Spiti.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

variations and cognate expressions,

ch other alteration of the surface or

from the effects of reasonable wear ;

(*b*) "the Mint" includes the Mints now existing and any which may hereafter be established ;

(*c*) "prescribed" includes prescribed by a rule made under this Act ;

(*d*) "remedy" means variation from the standard weight and fineness ; and

(*e*) "standard weight" means the weight prescribed for any coin.

Power to establish and abolish mints.

3. The Governor General in Council may by notification in the *Gazette of India*,—

(*a*) establish a Mint at any place at which a Mint does not for the time being exist ; and

(*b*) abolish any Mint, whether now existing or hereafter established.

Silver Coinage.

4. The following silver coins only shall be coined at the Mint for issue under the authority of the Governor General in Council, namely :—

Silver coins.

(a) a rupee to be called the Government rupee ;
(b) a half-rupee,*
(c) a quarter-rupee,* †

5. (1) The standard weight of the Government rupee shall be one hundred and eighty grains Troy, and its standard fineness shall be as follows, namely, eleven twelfths, or one hundred and sixty five grains of fine silver, and one-twelfth, and fifteen grains of alloy.

Standard weight and fineness.

(2) The other silver coins shall be of proportionate weight and of the same fineness :

Provided that in the making of silver coins, a remedy shall be allowed of an amount not exceeding the following, namely :—

	Remedy in weight.	Remedy in fineness.
Rupee ... ... Half-rupee ...	Five thousandths ...	Two-thousandths.
"Quarter-rupee ...	Seven-thousandths ...	Three-thousandths."‡

Nickel Coinage.

6 § The following nickel coins only shall be coined at the Mint for issue under the authority of the Governor General in Council, namely : "an eight anna, a four-anna, a two-anna and a one-anna piece."‡

Nickel coins

7. The standard weight of the "eight-anna, four-anna, two-anna and one-anna pieces shall be one hundred and twenty, one hundred and five, ninety, and sixty grains Troy respectively :" ‖

Standard weight.

Provided that, in the making of nickel coin, a remedy shall be allowed of an amount not exceeding one-fortieth in weight.

Bronze Coinage.

8. The following bronze coins only shall be coined at the Mint for issue under the authority of the Governor General in Council, namely :—

Bronze coins.

(a) a pice, or quarter anna ;
(b a half-pice, or one-eighth of an anna ; and
(c) a pie, being one-third of a pice, or one-twelfth of an anna.

9. (1) The standard weight of the pice shall be seventy-five grains Troy, and the other bronze coins shall be of proportionate weight.

Standard weight and composition.

* Certain words after this were omitted by Act 21 of 1919.
† Certain words after this were omitted by Act 4 of 1918.
‡ The words within quotations have been substituted by Act 4 of 1918.
§ Section 6 has been substituted by Act 4 of 1918.
‖ The words within quotations have been substituted by Act 21 of 1919.

(2) Bronze coins shall be coined from a mixed metal consisting of copper, tin and zinc :

Provided that, in the making of bronze coins, a remedy shall be allowed of an amount not exceeding one-fortieth in weight.

Dimensions and Designs of Coins.

Power to direct coining, and to prescribe dimensions and designs.

10. (1) The Governor General in Council may, by notification in the *Gazette of India*,—

(*a*) direct the coining and issuing of all coins referred to in sections 4, 6 and 8, and

(*b*) determine the dimensions of, and designs for, such coins.

(2) Until the Governor General in Council otherwise determines by notification under sub-section (1), the dimensions and designs of the silver coins coined under this Act shall be those prescribed for the like silver coins under the Indian Coinage Act, 1870,* at the time of the commencement of this Act.

Legal Tender.

Demonetization of sovereign and half-sovereign

†11. Gold coins, whether coined at His Majesty's Royal Mint or at any Mint established in pursuance of a Proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall not be legal tender in British India in payment or on account, but such coins shall be received at any Government currency office and, at any time after the 30th day of September, 1927, at any Government Treasury other than a Sub-Treasury, at the bullion value of such coins calculated at the rate of 8·47512 grains Troy of fine gold per rupee.

Silver coin when a legal tender.

12. (1) The rupee and half-rupee shall be a legal tender in payment or on account :

Provided that the coin—

(*a*) has not lost in weight so as to be more than two per cent. below standard weight, and

(*b*) has not been defaced.

(2) The quarter-rupee‡ shall be a legal tender in payment or on account for any sum not exceeding one rupee :

Provided that the coin—

(*a*) has not lost in weight so as to be more than such percentage below standard weight as may be prescribed as the limit of reasonable wear, and

(*b*) has not been defaced.

Nickel coin when a legal tender.

13. § The "eight-anna, four-anna and two-anna"‖ and one-anna nickel coins specified in section 6 shall be a legal tender in payment or on account for any sum not exceeding one rupee at the rate of "two, four",‖ eight and sixteen for a rupee, respectively.

Bronze coin when a legal tender.

14. The bronze coins specified in section 8 shall be a legal tender in payment or on account for any sum not exceeding one rupee at the following rates, respectively, namely :—

(*a*) the pice at the rate of sixty four for a rupee, or four for an anna ;

(*b*) the half-pice at the rate of one hundred and twenty-eight for a rupee, or eight for an anna; and

(*c*) the pie at the rate of one hundred and ninety two for a rupee, or twelve for an anna.

Coin made under former Acts.

15. (1) (*a*) All silver coin of the weight and standard specified in Acts No. XVII of 1835, No. XXI of 1838, No. XIII of 1862 and the Indian Coinage Act, 1870,* and

(*b*) all copper coin of the weight specified in Acts No. XXI of 1835, No. XXII of 1844, No. XIII of 1862 and the Indian Coinage Act, 1870,*

which may have been issued since the passing of those Acts respectively and declared by those Acts respectively to be a legal tender, shall, "subject only to the provisions of section 15 A and"† in the case of silver coin to the provisos contained in section 12 of this Act in so far as such provisos apply to like coins under this Act, continue to be a legal tender for the amounts for which the like silver and bronze coins are a legal tender under this Act respectively.

(2) All double pice copper coins which may have been issued under the Acts specified in sub-section (1), clause (*b*), shall continue to be a legal tender in payment or on account for any sum not exceeding one rupee at the rate of thirty two for a rupee or two for an anna.

Power to call in coin.

‡[15A. Notwithstanding anything contained in section 12, section 13, section 14 or section 15, the Governor General in Council may, by notification in the *Gazette of India*, call in, with effect from such date as may be specified in the notification, any coin, of whatever date or denomination, referred to in any of those sections other than the rupee and half-rupee referred to in sub section (1) of section 12, and on and from the date so specified such coin shall cease to be a legal tender save at a Government currency office:

Provided that such coin shall continue to be a legal tender also at Government treasuries until the expiry of such further period, not being less than twelve months, as the Governor General in Council may fix by the notification.]

Diminished, Defaced and Counterfeit§ Coins.

Power to certain persons to cut diminished or defaced silver coins.

16. Where any silver coin which has been coined and issued under the authority of the Governor General in Council is tendered to any person authorised by the Governor General in Council or by the Local Government to act under this section, and such person has reason to believe that the coin—

(*a*) has been diminished in weight so as to be more than such percentage below standard weight as may be prescribed as the limit of reasonable wear, or

(*b*) has been defaced,

he shall, by himself or another, cut or break the coin.

Procedure in regard to coin cut under section 16 (*a*).

17. A person cutting or breaking coin under the provisions of clause (*a*) of section 16 shall observe the following procedure, namely:—

(*a*) if the coin has been diminished in weight so as to be more than such percentage below standard weight as may be prescribed as the limit of reason-

---

*

Act 10 of 1924.

9 has been omitted.

able wear, but not more than such further percentage as may be prescribed in this behalf he shall either return the pieces to the person tendering the coin, or, if such person so requests, shall receive and pay for the coin at such rates as may be prescribed in this behalf; and

(*b*) if the coin has been diminished in weight so as to be more than such further percentage below standard weight so prescribed as aforesaid he shall return the pieces to the person tendering the coin, who shall bear the loss caused by such cutting or breaking.

Procedure in regard to coin cut under section 16 (*b*).

18. A person cutting or breaking coin under the provisions of clause (*b*) of section 16 shall observe the following procedure, namely :—

(*a*) if such person has reason to believe that the coin has been fraudulently defaced, he shall return the pieces to the person tendering the the coin, who shall bear the loss caused by such cutting or breaking;

(*b*) if such person has not reason to believe that the coin has been fraudulenty defaced he shall receive and pay for the coin at its nominal value.

Explantion.—For the purposes of this section a coin which there is reason to believe has been defaced by sweating shall be deemed to have been fraudulently defaced.

Procedure in regard to coin which is liable to be cut under both clause (*a*) and clause (*b*) of section 16.

19. If a coin is liable to be cut or broken under the provisions of both clause (*a*) and clause (*b*) of section 16, the person cutting or breaking the coin shall deal with it,—

(*a*) if he has reason to believe that the coin has been fraudulently defaced, under clause (*a*) of section 18, and

(*b*) in other cases, under section 17.

Power to certain persons to cut counterfeit silver or nickel coin and procedure in regard to coin so cut.

20. Where any silver "or nickle"* coin purporting to be coined or issued under the authority of the Governor General in Council is tendered to any person authorised by the Governor General in Council or by the Local Government to act under this section, and such person has reason to believe that the coin is counterfeit, he shall by himself or another cut or break the coin, and may at his discretion either return the pieces to the tenderer, who shall bear the loss caused by such cutting or breaking, or "in the case of silver coin"* receive and pay for the coin according to the value of the silver bullion contained in it.

Supplemental Provisions.

Power to make rules.

21. (1) The Governor-General in Council may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) reduce the amount of remedy allowed by sections 5, 7, and 9 in the case of any coin;

(*b*) provide for the guidance of persons authorised to cut or break coin under sections 16 and 20;

(*c*) determine the percentage of diminution in weight below standard weight not being less in any case than two per cent, which shall be the limit of reasonable wear;

(*d*) prescribe the further percentage referred to in clause (*a*) of section 17, and the rates at which payments shall be made in the case of coins falling under the same clause;†

* The words within quotations have inserted by Act 2 of 1919.

† The word "and" and clause (e) were omitted by Act 4 of 1927.

(3) Every such rule shall be published in the *Gazette of India*, and on such publication shall have effect as if enacted in this Act.

Bar of suits.

22. No suit or other proceeding shall lie against any person in respect of anything in good faith done, or intended to be done, under or in pursuance of the provisions of this Act.

Saving of making of other coins at Mints.

23. Nothing in this Act shall be deemed to prohibit or restrict the making at the Mint of coins intended for issue as money by the Government of any territories beyond the limits of British India.

Repeals.

24.* Copper coins of such descriptions as at the time of the commencement of this Act may be coined at the Mint for issue under the authority of the Governor General in ... Governor General ... herwise direct, and ... or on account for the amounts for which bronze coins of corresponding nominal value are a legal tender under this Act.

THE SCHEDULE.

[Repealed by Act 10 of 1914.]

THE COLONIAL COURTS OF ADMIRALTY (India) ACT, 1891.

ACT XVI OF 1891.

RECEIVED THE G. G.'S ASSENT ON THE 14TH MAY, 1891.

An Act to declare certain Courts in British India to be Colonial Courts of Admiralty

... Admiralty Act, 1890,† that colonial law declare any ... sion to be a Colonial Court of Admiralty ;

And whereas it is expedient, in pursuance of that provision, to declare certain Courts in British India to be Colonial Courts of Admiralty ;

It is hereby enacted as follows :—

Title and commencement

1. (1) This Act may be called the Colonial Courts of Admiralty (India) Act, 1891 ; and

(2) It shall come into effect—

(*a*) if Her Majesty's pleasure thereon has been signified, by notification in the *Gazette of India*, on or before the first day of July, 1891, then on that day, or

(*b*) if Her ... not been so signified on or before that day ... Her Majesty's pleasure shall be signified by such ...

Appointment of Colonial Courts of Admiralty

2. The following Courts of unlimited civil jurisdiction are hereby declared to be Colonial Courts of Admiralty, namely —

(1) the High Court of Judicature at Fort William in Bengal,

---

* Certain words after this repealed by Act 10 of 1914 have been omitted.

† 53 and 54 Vict., c. 27.

(2) the High Court of Judicature at Madras,
(3) the High Court of Judicature at Bombay,
(4)* "the High Court of Judicature at Rangoon"†
‡(4a) "the Chief Court of Sind, and,"
(5) the Court of the Resident at Aden,§

Construction of Indian Acts referring to Admiralty and Vice-Admiralty Courts.

3. The expressions "Court having Admiralty jurisdiction" and "Admiralty Court," and the expression "Admiralty or Vice-Admiralty cause," and other expressions referring to Admiralty or Vice-Admiralty Courts or Causer, shall, wherever any such expression occurs in any enactment of the Governor-General in Council, or of a Governor in Council or Lieutenant-Governor in Council, be deemed to include a Colonial Court of Admiralty and a Colonial Court of Admiralty cause, and to refer to a Colonial Court of Admiralty or a Colonial Court of Admiralty cause, respectively.

Court-fees in suits in the *Colonial Courts of Admiralty* at Rangoon, Aden and Karachi

4. Court-fees in suits instituted in the Colonial Court of Admiralty at Rangoon, Aden or Karachi, shall, unless the *jurisdiction of the* Court *is to be exercised in any* matter relating to the slave-trade, be leviable in accordance with the provisions of Chapter III of the Court fees Act. 1870.

5. [*Repealed by Act X of* 1914.]

THE SCHEDULE.

ENACTMENTS REPEALED

[Repealed by Act X of 1914.]

THE INDIAN COMPANIES ACT, 1913.

ACT NO. VII OF 1913.

CONTENTS.

* Substituted by Act 6 of 1900.
† Substituted by Act 11 of 1923.
‡ Clause (4a) is deemed to have been inserted by Act 34 of 1926.
§ The words 'and" and item (6) are deemed to have been omitted by Act 34 of 1926.
‖ Act I of 1870.

THE INDIAN COMPANIES ACT, 1913.

ACT NO. VII OF 1913.

Received the G. G.'s Assent on the 27th March, 1913.

An Act to consolidate and amend the law relating to Trading Companies and other Associations.

Whereas it is expedient to consolidate and amend the law relating to Trading Companies and other Associations; It is hereby enacted as follows:—

The Indian Companies Act.—The Indian Companies Act is based upon the English Companies Act, 1908 and many sections of that Act have been taken *verbatim* from that Act. In interpreting the Indian Companies Act, recourse may be had to the English decisions where it is based on the corresponding section of the English Act. *Vide* [illegible] *v.* [illegible], 13 Ind. Cas. 674=41 M. 307; see also [illegible] B. 311; [illegible] 1915; 7 [illegible] 491; 18 Ind. Cas. 997. The Companies Act is an Act merely legislating for or reg[illegible] under the common law in England [illegible] Ind. [illegible] 1918 M. W. N. [illegible] Where a company dul[illegible] Companies Act, the presumption is that it is a [illegible] although that individual may practically hold all the shares. 102 Ind. Cas. 49

[illegible] (1) ordinary partnership, [illegible] ies incorporated by speci[illegible] (6) Trade Unions and (7) [illegible]

[illegible] ship would apply to a body of persons, which [illegible] new members without the consent of all the [illegible] the outside world whatever may be the [illegible] themselves, each partner is the admitted [illegible] with the partnership business, or [illegible] and not being [illegible] beyond [illegible]

[illegible]

Origin of Companies Act.—[illegible] was the [illegible] which companies could be incorporated. As regards [illegible] *Joint Companies* [illegible] *v.* [illegible] "When [illegible] engaged in commerce [illegible] great [illegible] it soon became evident that the [illegible] were ill-adapted to the business of [illegible]

[illegible] partners, this rule would, if adhered to, have made litigation practically impossible and [illegible] to a denial of justice."

Consolidating.—The following rules, laid down by *Lord Herschell* in [illegible] a Consolidating Act "I think the proper course is, in the first instance, to examine [illegible]

the language of the Statute, and to ask, what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered to see if the words of the enactment will bear an interpretation in conformity with this view. If a Statute intended to embody in a Code a particular branch of the law is to be treated in this fashion it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a Statute surely was that on any points specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was—extracting it by a minute critical examination of the prior decisions dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am, of course, far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the Code. If, for example, a provision be of doubtful import such resort would be perfectly legitimate. Or again, if in a Code of the law of negotiable instruments words would be found which had previously acquired a technical meaning, or been used in a sense other than their ordinary one in relation to such instruments the same interpretation might well be put upon them in the Code I take these as examples merely; they, of course, do not exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the Statute, and that an appeal to earlier decisions can only be justified on some special ground." *Bank of England v. Vagliono*, (1891) *A. C.* 144. In *Mersey Dock Case*, 11 H. L. C. 443, *Blackburn J.* said : "Where an Act of Parliament has received a judicial construction putting a certain meaning on its words, and the legislature in a subsequent Act in

should be so construed, even if the words were such that they might originally have been construed otherwise.." See also 5 Ch. 703 ; (1891) 3 Ch. 115; 14 Ch. D. 571; (1904) 2 K. B. 859.

PART I.

PRELIMINARY.

Short title, commencement and extent.

1. (1) This Act may be called the Indian Companies Act, 1913.

(2) It shall come into force on the first day of April, 1914 , and

(3) It extends to the whole of British India including British Baluchistan and the Santhal Parganas.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the Schedule annexed to Act No XIX of 1857 or in the Table A in the First Schedule annexed to the Indian Companies Act, 1882,* or in Table A in the First Schedule annexed to this Act :

(2) "company" means a company formed and registered under this Act or an existing company :

(3) "the Court" means the Court having jurisdiction under this Act :

(4) "debenture" includes debenture stock :

(5) "director" includes any person occupying the position of a director by whatever name called :

(6) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction :

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* Act VI of 1882.

(7) "existing company" means a company formed and registered under the Indian Companies Act, 1866,* or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882 †

(8) "Insurance Company" means a company that carries on the businesss of insurance either solely or in common with any other business or businesses :

(9) "manager," includes any person occupying the position of a manager by whatever name called and whether under a contract of service or not :

(10) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act :

secretary but, save in

of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and, as respects the other provisions of this Act, prescribed by the Governor General in Council :

(13) "private company" means a company which

(i) by its articles—

(a) restricts the right to transfer its shares ; and

(b) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty ; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company : and

(ii) continues to observe such restrictions, limitations and prohibitions :

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be considered as a single member :

(14) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company :

(15) "the registrar" means a registrar or assistant registrar performing under this Act the duty of registration of companies : and

(16) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.

Auditor.—Auditor deliberately passing over of misfeasance. A. I. R. 1929 All. 826=121 In at General Meeting but not mentioned as officers i not entitled to indemnity though article dealing with the conduct of business provided for indemnity to officers because company suffered loss through neglect of the auditors. *Ibid.*

Court.—Orders under the Act must be passed by the Court having jurisdiction under the Act. 35 C. W. N. 299=58 C. 913=133 Ind Cas 566.

nies, it is impracticable for the consequently the duty of manaelect governing body consisting ing the powers ordinarily conferred on a director will, whatever he be called, be in the same position as a director. *Bullaway's Market and Offices* (1907) 2 Ch. 458 cited in Stiebel *Company Law*, p. 333. A limited company may be a director or the sole director of another company if it has the requisite power. (1907) 2 Ch. 458. As to who can challenge appointment of director, *vide* 31 Ind. Cas. 595

Manager.—A manager is one "who has the management of the whole affairs of the company ; not an agent who is to do a particular thing or a servant who is to obey orders, but a person who is entrusted with power to transact the whole of the affairs of the company." *Per Blackburn J.* in *Gibson* v. *Barton*, (1875) 10 Q. B. 329. A person in charge of the business of a branch of a bank, therefore, does not come

* Act X of 1866. † Act VI 1882.

within the purview of the term "Manager". *Basant Lal* v. *Emperor,* 43 Ind. Cas. 791.

Prospectus.—It is a document which invites persons to take shares in the Company, and sets forth the advantages of the company. *Stiebel,* p. 211. An advertisement is a prospectus. *Pramatha* v. *Kali,* 52 C. 440=29 C. W. N. 523=88 Ind. Cas. 5 (2)

3. (1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate :

Jurisdiction of the Courts.

Provided that the Local Government may, by notification in the local official Gazette and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district.

(2) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

District Court.—S. 284 is wide enough to preserve the existing jurisdiction of District Courts over cases which began before the commencement of this Act. *Danial* v. *Liquidators,* 20 P R. 1915=29 Ind. Cas 272. The District Court has jurisdiction under the jurisdiction of which the registered office is situate. 15 Lah. 302=147 Ind. Cas. 739=A. I. R 1934. Lah. 362. Where Local Government confers power on District Court under proviso to s 3, that Court has exclusive original jurisdiction. But this does not oust revisional jurisdiction District Court acting under Companies Act is subordinate to High Court. A. I. R. 1935 All 310.

High Court—Is intended to include all the sides of the High Courts and is applicable to High Courts [illegible] Courts having no original side. 29 C W. N. [illegible] be made to the original side of the High Co[illegible]he company may be situate. 29 C. W. N. 403=86 Ind. Cas 833=53 C 586 Not the Allahabad High Court but the Chief Commissioner of Ajmer and Merwara is the High Court for the purposes of Companies Act for places within its jurisdiction 96 Ind. Cas. 753

Clause (3)—Clause (3) does not apply when objection to jurisdiction is taken at the very commencement and at the proper time. 57 M. L. J 723=53 M. 147=1929 M. W. N. 879=A. I. R. 1930 Mad. 74.

PART II.

CONSTITUTION AND INCORPORATION.

4. (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor-General in Council, or of Royal Charter or Letters Patent

Prohibition of partnerships exceeding certain number.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council or of Royal Charter or Letters Patent.

Company.—The words "company" and "association" are synonymous. *Smith* v. *Anderson,* 15 Ch. D. 247. To constitute an association within the meaning of this section, it is absolutely necessary that there should be between more than twenty

persons so associated a legal relation giving rise to joint and mutual rights and obligations. *T. P. Naidu* v. *A. S. Mudaliar*, 50 Ind. Cas. 513. An agreement known as a *chitfund* under which more than twenty persons contract with the manager of the fund to pay their subscriptions for a fixed period and draw the amount by lots, creates rights as between the manager and the other parties to the agreement but it creates no legal relation between the other parties *inter se*, and is, therefore, not an association within the meaning of this section *Ibid.* An association of several
formed with the object of acquiring com-
ew of this section and requires registra-
The word "person" denotes individuals
whether corporate or not, since any such
extended definition would be repugnant to the subject and context of the section. *Ibid.* The formation of a company exceeding the requisite number of persons is illegal without registration. *Ram* v *Nem*, 64 Ind Cas. 447=19 A. L J. 836 ; *District Savings Bank*, 3 De G. F. & J 335 ; *Re Thomas*, (1885) 14 Q. B D. 379.

Partnership.—*Vide* 65 Ind. Cas. 368 ; A I. R. 1933 Sind. 29=26 S. L. R. 395=141 Ind Cas. 290 ; A. I. R. 1934 Nag 45 ; 36 Bom L. R 786.

Business—The term "business" is wider than the term "trade" and as such includes farming. *Harris* v. *Amery*, L R 1 C. P 117 ; see also *Crowther* v *Thorley* 32 W. R. 330 As regards what are not business, *vide Smith* v *Anderson*, 15 Ch. D. 247 ; *Re Siddal*, 20 Ch D. 1 ; *Wigfield* v *Potter*, 45 L T. 612 ; *Reg* v. *Whitmarsh*, 15 Q. B. 600 ; *Moore* v. *Rawlins*, 6 C B. N. S. 289. A business carried on by more than 20 trustees where the *cestuis qui trustees* do not exceed twenty does not require registration. *Smith* v. *Anderson*, 15 Ch D. 247 , *Crowther* v. *Thorley*, 32 W. R. 330 ; see also 25 T. L. R. 674 The term "carrying on business" means some continuous control over the business by the association. A. I. R. 1934 Lah. 882=36 P. L. R 149

Gain—The section will be satisfied if the individual members acquire gain. 10 Ch. D. 542 ; 20 Ch. D. 137. The term "gain" is not confined to pecuniary gain. 10 Ch. D. 542.

Non-registration—An association which is required to be registered under this section cannot sue and be sued unless registered under the Act. *Shaw* v. *Benson*, 11 Q. B. D 563 ; *Jennings* v. *Hammond*, 9 Q. B. D 225 ; *Edinburgh Aerated Co.* (1904) 5 Fraser, 1159 ; 9 Ind. Cas. 25 ; 1 B 550 ; 19 M. 200 ; 20 Ch. D. 137 ; 12 A. L. J. 836. A Trade Association cannot be said to be unlawful, merely because it has not been registered in conformity with the provisions of the Act. 53 A. 516=A I. R. 1931 All. 83. When the total number of persons constituting four unregistered firms carrying on business consists of 22 persons, such partnership is illegal 126 Ind. Cas. 429=A. I. R. 1930 P. C. 300=34 C. W N 1107. An unregistered company of nine shareholders does not require registration for its valid existence. 84 Ind Cas. 118=20 M. L. J. 430. In the case of unregistered association of more than 20 persons if a member sue for dissolution a declaration can be granted that association is illegal but no relief for dissolution or account cannot be granted. 97 Ind. Cas. 90=48 A. 735 ; 92 Ind. Cas. 152=48 A. 395. But a suit for declaring the respective share of the members of the association and directing that the members be repaid their shares is maintainable. 120 Ind. Cas. 902 The illegality of such an association is not cured by subsequent reduction in number but by registration such illegality can be cured *Ibid.* A partition suit by one partner against the remaining partners of an ille-
=A. I. R 1927 All 487=100 Ind.
any member of an unregistered
ts of such an association. 48 A.
tract is a person constituting the
nay be a joint Hindu family or he
several other members. 95 Ind.
ginal object of the association has
association, and no regard should
n, and so, if a perfectly legal asso-
ciation be formed, and if later on some of the members of the association should commit a breach of trust, that fact should not render the original association an illegal one. 122 Ind. Cas 401=A. I. R. 1930 All. 186 Where it is not shown that the company formed for the purpose of carrying on business in a Native State would be illegal according to the law prevalent in that State, the company or the members forming it do not commit an illegal act. 121 Ind. Cas. 581=53 B. 652=A. I. R. 1930

Bom. 5. It is doubtful whether an association consisting of 100 members, where subscription are to be paid by lots of members requires registration 34 P. L. R. 663=A. I. R. 1933 Lah. 121=34 P. L. R. 603 Where a society consists of more than 20 members carries on money-lending business and out of the profit helps the poor it requires registration. A. I. R. 1932 Rang. 167=10 Rang. 490=140 Ind. Cas. 467. An unregistered association is an illegal association and the plaintiff who knew of this illegality can not have any remedy. A. I. R. 1934 Lah 882; see also A. I. R. 1934 Bom. 361. The provisions of the Companies Act do no prevent an association from being made liable to income-tax on his profits even if it has not been registered in accordance with the Companies Act. 32 P. L. R. 335=A. I. R. 1931 Lah. 376.

Person.—"Person" does not mean unregistered firm 1927 Mad 123=99 Ind. Cas 640. The word "person" may comprise a number of individuals such as a Hindu joint family. 32 Bom. L R. 389=126 Ind Cas. 395.

Exception.—This section contains an exception in favour of companies formed ome other Act of the Governor General in atent. *Vide Peat* v. *Fowler*, 55 L. J. Q. B. 9. Foreign companies come within this . C. 386.

Memorandum of Association.

Mode of forming incorporated company.

5. Any seven or more persons (or, where the company to be formed will be a private company, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

(*i*) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this act termed a company limited by shares); or

(*ii*) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or

(*iii*) a company not having any limit on the liability of its members (in this Act termed an unlimited company).

Notes.—Where the proprietors of a zemindari having grown too numerous formed themselves into a limited liability company and the company was duly .n Companies Act: *Held*, that such a to the proprietors themselves but to th them, and there was nothing in the to public policy. 16 C. W. N. 297.

Memorandum of company limited by shares.

6. In the case of a company limited by shares—

(1) the memorandum shall state—

(*i*) the name of the company, with "Limited" as the last word in its name;

(*ii*) the province in which the registered office of the company is to be situate;

(*iii*) the objects of the company;

(*iv*) that the liability of the members is limited;

h the company proposes to be fixed amount;

e less than one share

(3) each subscriber shall write opposite to his name the number of shares he takes.

Memorandum of Association.—In *Ashbury Railway Carriage and Iron Company, Ltd.* v. *Riche*, L. R. 7 H L. 653, *Lord Chancellor Cairns* observed: "With

regard to the Mem
already been point
present case, that t
a company to be e
those Articles play
the Memorandum of Association as the [illegible]
so accepting it, the Articles proceed to define the duties, the rights, and the pow-
ers of the governing body as between themselves and the company at large and the mode and form in which the business of the company is to be carried on, and the mode and form in which changes in the internal regulations of the company may from time to time be made. With regard, therefore, to the Memorandum of Association, if you find anything which goes beyond that memorandum, or is not warranted by it, the question will arise, whether that which is so done is *ultra vires*, not only of the directors of the company, but of the company itself. With regard to the Articles of Association, if you find anything which, still keeping within the Memorandum of Association is a violation of the Articles of Association or in excess of them, the question will arise, whether that is anything more than an act *ultra vires* the directors, but *ultra vires* the company." Cited at 16 B. pp. 340, 341. "The memorandum is, as it were, the area beyond which the action of the company cannot go; inside that area the shareholders may make such regulation for their own government as they think fit." *Per Lord Cairns* in *Ashbury Railway Co. v. Riche*, L. R. 7 H. L. 670; see also *Trevor v. Whitworth*, 12 App. Cas. 409; *Guinness v. Land Corporation of Ireland*, 22 Ch. D. 349; *Welton v. Saffery*, (1897) A. C. 299; *Re Peveril Mines*, (1898) 1 Ch. 122; *Ashbury v. Watson*, 30 Ch. D. 376; (1902) A. C. 232; (1882) 22 Ch. D. 394; 41 A. 619; *Baring Gould v. Sharpington*, (1899) 2 Ch. 80; *Payne v. Cork Co.*, (1901) 1 Ch. 308. A Memorandum of Association like any other document must be read fairly and interpreted reasonably. There is no specially rigid canon of construction. The intention is to be gathered from the language used. Antecedent transactions and surrounding circumstances cannot be looked into. A. I. R. 1931 P. C. 182=134 Ind. Cas. 333 P. C. Powers are not required to be and ought not to be required in the memorandum. In the case of a trading company, the memorandum should only define the trade and not specify the various acts which it should be within the power of the company to do in carrying on the trade. *Ibid.*

Name of the Company.—"Why this solicitude on the part of the legislature as to publication of a company's name? The answer is, that the legislature, whilst allowing limited liability, desired by this means to make the company itself continually bring to the notice of those who dealt or might deal with it the fact that it was limited."—*Palmer*, p. 248.

Registered Office.—Every company under the Act is bound to have a registered office to which all communications and notices may be addressed. *Ibid.* p. 245.

Objects of the Company.—The third requirement is that the company must state the objects of the proposed company. The objects must not include anything in contravention of the Act. *Vide Ooregum Gold Mining Co. v. Roper*, (1892) A. C. 125. The objects stated must not include anything in contravention of the general law. The object clause limits the power of the company. *British South Africa Co. v. De Beers Consolidated Mines*, (1910) 1 Ch. 354. Any act done beyond what is stated in the object is *ultra vires* and the assent of every single shareholder will not make it good. *Ashbury v.* [illegible] *South Australian Banking Co.*, (1871) L. R. 3 P. C. 548; [illegible] (1909) 2 L. S. R. 100; *National Telephone Co. v. St. Peters Port*, (1900) A. C. 317; *Great Eastern Railway v. Turner*, (1872) 8 Ch. 149.

An alteration in the memorandum can only be made by a special resolution. 33 M. 50.

Memorandum of company limited by guarantee.

7. In the case of a company limited by guarantee—

(a) the memorandum shall state—

(i) the name of the company, with "Limited" as the last word in its name;

(ii) the province in which the registered office of the company is to be situate;

(iii) the objects of the company;

(*iv*) that the liability of the members is limited ;

(*v*) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount :

(2) if the company has a share capital—

(*i*) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount ;

(*ii*) no subscriber of the memorandum shall take less than one share ;

(*iii*) each subscriber shall write opposite to his name the number of shares he takes.

Notes—A member of a company limited by guarantee and not having a share [illegible] *Bairds' Case* (1899) 2 Ch. 593. In the [illegible] ee which has a share capital, every mem- [illegible] on to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him. Stiebel, *Company Law*, p. 1153.

Memorandum of unlimited company.

8. In the case of an unlimited company—

(1) the memorandum shall state—

(*i*) the name of the company ;

(*ii*) the province in which the registered office of the company is to be situate ;

(*iii*) the objects of the company ,

(2) if the company has a share capital—

(*i*) no subscriber of the memorandum shall take less than one share ;

(*ii*) each subscriber shall write opposite to his name the number of shares he takes.

Notes—Companies with unlimited liability are rarely formed and while limited companies have been increasing by leaps and bounds unlimited companies have dwindled nearly to zero An unlimited company requires a memorandum and articles of association and may have a joint stock capital divided into shares, or no such capital. Its name will not include the word "Limited". If the company is wound up, the liability of its members to contribute to the payment of debts and cost of winding up will be unlimited. Palmer's *Company Law*, p. 375.

Signature of memorandum.

9. The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

Signature—Any one may sign the memorandum. A subscriber may be a mar- [illegible]

be used ; but sometimes the same witness can not attest all the signatures and in that case the attestation clause must be altered Palmer's *Company Law*, p. 36. After registration a subscription cannot be repudiated on the ground of misrepresentation *Metal Constituents Ltd.* (1902) 1 Ch 707.

Restriction on alteration of memorandum.

10. A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made [illegible] this Act.

Notes.—In keeping a company strictly to the objects defined in its memorandum of association the Legislature intended to protect, not only investors and shareholders, but also the outside public, and more particularly creditors. *Ashbury* v. *Riche*, 7 H. L. 667. "But there are other things that can be put into a memorandum of association than the object and matters set out in the Companies Act such as, name, capital, address, etc They have been described as conditions. A very com-
y share-
in the
mpanies
lition is
unalterable either by the company or by the Court at all See *Ashbury* v. *Watson*, 30 Ch. D. 376" *In the matter of Coimbatore Mercantile Bank Ltd*, 74 Ind. Cas. 966=1924 Mad. 126 ; see also 36 Bom. L. R. 907. Before the Court can sanction a
of the company, company
Bom. 80=198 Ind. Cas. 465.
tion is not necessarily requir-
ed to be made in the general meeting of the company. *Ibid*

11. (1) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

Name of company and change of name.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

(3) A company shall not be registered by a name which contains any of the following words, namely ;—"Crown" "Emperor," "Empire," "Empress," "Imperial," "King," "Queen," "Royal." ["Bank of Bengal", "Bank of Madras", "Bank of Bombay"]* or words expressing or implying the sanction, approval or patronage of the Crown or the Government of India or a Local Government, except where the Governor General in Council signifies his consent to the use of such words as part of the name of the company by order in writing under the

companies registered

(4) Any company may, by special resolution and subject to the approval of the Local Government signified in writing, under the hand of one of the Secretaries to such Government, change its name.

(5) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such certificate, the change of name shall be complete.

(6) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company ; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Clause (2).—The principle on which the Court interferes in such cases is that one person is not to be permitted to represent the business which is carried on by another as carried on by him. *Croft* v. *Day*, 7 Beav. 84 ; *Hendricks* v. *Montague*, 17 Ch. D. 638 ; *Tassaud* v. *Tassaud*, 44 Ch. D. 678 ; *North Chesire Brewery* v *Manchester Brewery*, (1899) A. C. 83 ; see also (1898) 1 Ch. 179 ; (1899) A. C. 610 ; (1901) 2 Ch. 513 ; (1902) 2 Ch. 319 ; (1907) 2 Ch. 312 ; 87 L. T. 259 ; 97 L. T. 196 ; 25 T. L. R. 420 ; (1917) 2 Ch. 1.

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* The words within quotions have been inserted by Act 47 of 1920.

The certificate of incorporation of a Company is conclusive that all previous requisitions had been complied with and precludes any enquiry as to the regularity of proceeding *Mossa* v. *Ebrahim*, 16 C. W. N. 937 P. C.

12. (1) Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum so as to change the place of the registered office from one province to another, or with respect to the objects of the company, so far as may be required to enable it—

Alteration of Memorandum.

(*a*) to carry on its business more economically or more efficiently ; or

(*b*) to attain its main purpose by new or improved means ; or

(*c*) to enlarge or change the local area of its operations ; or

(*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or

(*e*) to restrict or abandon any of the objects specified in the memorandum.

(2) The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition.

(3) Before confirming the alteration, the Court must be satisfied—

(*a*) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interest will, in the opinion of the Court, be affected by the alteration ; and

(*b*) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court :

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

Scope —This section empowers a company by special resolution to add to or alter its articles. Such alterations must be "subject to the provisions of the Act and to the conditions contained in the Memorandum of Association " All or any of the articles may be altered and no restriction can be put upon this power in the memorandum. *Walker* v *London Tramway Co* , 12 Ch. D 705 ; *Malleson* v *National Insurance Co.*, (1894) 1 Ch. 202 Such alterations are binding on outsiders. *Allen* v *Gold*, (1900) 1 Ch. 656 : *Punt* v. *Symons*, (1903) 2 Ch. 500 "The power" said *Lindley M R.* in *Allen* v. *Gold*, (1900) 1. Ch 656, "thus conferred on corporation to alter the regulations is limited only by the provisions contained in the Statute and the conditions contained in the company's Memorandum of Association. It must be exercised for the benefit of the Company as a whole, and it must not be exceeded. These conditions are always implied and are seldom if ever expressed. But if they are complied with, I can discover no ground for judicially putting any other restrictions on the power conferred by the section than those contained in it See also *Pepe* v. *City*, (1893) 2 Ch 311 ; (1906) A. C. 35 But in making the alterations no statutory principles of law must be violated. (1898) 1 Ch. 121 ; (1900) 1 Ch. 308, (1908) 1 Ch. 84. For purposes of jurisdiction for an application under this section of the Companies Act to confirm the resolutions proposing the transfer of the place of business, the Court must have ordinary jurisdiction in the place at which the registered office of the company is situate. 96 Ind. Cas. 753 (2) = 24 A. L. J. 768.

13. The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

Power of Court when confirming alteration.

Notes —The Court has no jurisdiction to rectify articles of association on the ground of mistake, for they have statutory operation *Evans* v. *Chapman*, 86 L. T. 381.

14. The Court shall, in exercising its discretion under sections 12 and 13, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may

Exercise of discretion by Court.

be made to the satisfaction of the Court for the purchase of the interests of ... directions and make such orders as it ... arrying into effect any such arrargement: ... of the company may be expended in any such purchase.

Notes.—The Court can sanction alteration which substituted a complete new set of objects in modern form for the old concise and imperfect objects. Palmer's *Company Law*, p 79

Procedure on confirmation of the alteration.

15. (1) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the Company with the registrar, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation therof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

... a transfer of the registered office from one ... f the order confirming such change shall ... trar in each of such provinces, and each of such registrars shall register the same and shall certify under his hand the registration thereof, and the registrar for the province from which such office is transferred shall send to the registrar for the other province all documents relating to the company registered or filed in his office.

(3) The Court may by order at any time extend the time for the filing of documents with the registrar under this section for such period as the Court thinks proper.

Effect of failure to register within three months.

16. No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such registration is not effected within three months next after the date of the order of the Court confirming the alteration, or within such further ...

... be, become absolutely null and void:

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

Articles of Association.

Registration of articles.

17. (1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule.

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

Notes.—The Memorandum of Association, when taken in for registration may be accompanied by articles of association containing regulations for the manage-

ment of affairs of the company. Palmer's *Company Law*, p. 37. Clause limiting liability of director is valid. A. I. R. 1934 All. 855=4 A. W. R. 132.

Application of Table A.

18. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Notes.—Articles of Association may adopt all or any of the regulations contained in Table A in the First Schedule to this Act. The articles are to be expressed in separate para
sions contain
contained in
Palmer's *Con*
in the Article
trary. A I R. 1931 Pat 44=130 Ind. Cas. 534

Form and signature of articles

19. *Articles shall*—

(*a*) be printed ;
(*b*) be divided into paragraphs numbered consecutively ; and
(*c*) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

Notes.—The articles, if any, must be printed and must be signed by the subscribers to the Memorandum of Association. Each subscriber must sign in the presence of a witness who must attest the signature. As in the case of the memorandum, the signature may be under the signatory's own hand or that of his duly authorised agent. One of the subscribers cannot attest the signature of another. Palmer's *Company Law*, p. 37. Articles have been held to be binding on a company, though not signed, after they have been acted on. *Ho Tung* v. *Man On Insurance Co*, (1902) A. C. 239

Alteration of articles by special resolution

20. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles, and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, extend to altering any provisions in Table B annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Notes.—This section gives to a company under this Act power by special resolution, but "subject to the provisions of this Act and to the conditions contained in the memorandum of association," to alter or add to its articles, and it expressly provides that "any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution. Nothing could be wider than the terms of this section. It does not say that the articles for the management or administration of the business may be altered, or that

Ch. 200 ; *Allen* v. *Gold Reefs of West Africa*, (1900) 1 Ch. 656 ; *Punt* v. *Symons* &

. alter the regula-
nd the conditions
: exercised for the
Those conditions
e complied with,
ons on the power
M. R. In *Allen* v.
City of Suburban
uitable Assurance
ng Society, 22 Q. B. D. 373 ; *Re Barrow Hemaite*, 29 Ch. D. 582 ; *Donans Case*, 3 Ch. D. 21 ; *Re Argus Co.*, 39 Ch D. 571.

with the object of defrauding
or principle of law, is invalid.
). (1900) 1 Ch. 398 ; *Miner* v. *Hooper's Telegraph Co.* L. R. 9 Ch 350 ; *Gray* v. *Lewis*, L. R. 8 Ch. 1051 ; *Atwool* v. *Merryweather*, 5 Eq. 464 (n) ; *Mason* v. *Harris*. 11 Ch D 97 ; *Macdongall* v. *Gardiner*, 1 Ch. D. 13 ; *Burland* v. *Earle*, (1902) A. C 83 ; *Normanby* v. *Ind. Coope & Co*, (1908) 1 Ch. 84. But in the absence of fraud or oppression, the limit to alteration is thus laid down by *Lord Cairns L. C* in *Ashbury* v. *Riche*, L. R. 7. H. L 653, 671 : 'The memorandum is, as it were, the area beyond which the action of the company cannot go ; inside the area the shareholders may make such regulations for their own government as they think fit."

The moving or passing of a resolution regulating the business of the members upon the happening of a sudden and unexpected emergency due to unusual rainfall will not be an amendment of the Articles of Association A I R 1930. All. 661= 's permissible.
the company
its directors.
It can alter the same only by a special resolution as required by s 20. A. I R. 1927 R. 1362. Preferential claims of particular
ss under the provisions modification of the
by any of the sections of the Companies
Bom. 38=110 Ind. Cas. 649. The power of
ity must be exercised subject to a general
exercised for the purpose of benefiting the
members. A. I. R 1927 P. C. 62=101 Ind.
r of directors without altering Articles of
Association by special resolution. 143 Ind. Cas. 7=1933 A. L. J. 290=55 A. 399= A. I. R. 1933 All 344.

General Provisions.

21. (1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, his heirs, and legal representatives, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

Effect of memorandum and articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

it though articles of associa-
and an outsider, nor give
ond those of the members
generally, they do not in fact constitute a contract between a company and its members in respect of their ordinary rights as members. *Prichard's Case*, (1873) 8 Ch. App. 956 ; *Melhado* v. *Porto*, L. R 9 C. P. 503 ; (1876) 1 Ex. D. 20 ; (1887) 37 Ch. D. 1 ; *Re Imperial Hydropathic Hotel Co*, (1882) 23 Ch D. 1, 13 ; 5 Ch D. 687 ; 12 App. Cas. 29 ; 42 Ch. D. 636 ; (1909) 1 Ch. 311 ; (1897) A. C. 299 ; (1908) 1 Ch. 743 ; (1915) 1 Ch. 881 ; 52 B 477=A I.R. 1928 B. 252.

Articles of Association can be read for the purpose of explaining the memorandum in respect of a matter which need not appear in the latter—for example, the borrow-

ing of money by a railway company—but not for the purpose of showing that borrowing means the granting of perpetual annuities, for that is not borrowing, nor is it a purpose subsidiary to the general objects of such a company. (1905) 2 Ch. 78. A provision in the Articles of Association of a registered company which makes a shareholder's debt to the company a charge on his shares applies to the case of debtors who afterwards become shareholders. *Chandooru* v *Venugopala*, 43 Ind. Cas. 508=1918 M.W.N. 51. Where election is *ultra vires* it can be aside by Court. A. I. R. 1932 Mad. 100=136 Ind. Cas. 193. Service of notice in pursuance of resolution is necessary to constitute valid call. A. I. R. 1932 Cal. 716=36 C. W. N. 589=59 C. 1186. *Ultra vires* transactions by company creates no debt and contributories are *not liable to pay it during liquidation* 133 *Ind. Cas.* 378=60 *M. L. J.* 270 =A. I. R. 1931 Mad. 792. Suit for arrears of allotment and call money is small cause suit. A. I. R. 1933 Lah. 657=34 P L.R. 592=143 Ind Cas 723.

The articles are the deed of partnership by which the shareholders agree *inter se*. (1906) 2 Ch. 34 at p. 44. Limited company can as of right amalgamate itself with another company and no express power in the Memorandum of Association is necessary for purpose. 90 Ind. Cas. 580=26 Bom. L R. 987.

Registration of memorandum and articles.

22. The memorandum and the articles (if any) shall be filed with the registrar for the province in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

Notes.—A foreign corporation cannot be registered under this Act. *Bulkeley* v ... A. C 386 A partnership ... as to be capable of regis- ... Q. B. 598 ; *Cussons Ltd.* (1904) ; 73. L J. Ch. 196 Person dealing with the company must take the articles to be such as appear at the office of the Registrar of Companies, to be in force. 100 Ind. Cas 875=45 C. L. J. 96=A. I R. 1927 Cal 299. Pledge after liquidation is void if made without Court's permission. 1933 A L J. 1332=A I R 1933 All. 607. Registrar can refuse to register alterations of articles 141 Ind. Cas 177=63 M. L. J. 17=A I. R 1933 Mad. 129.

Effect of registration

23. (1) On the registration of the memorandum of a company, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

... and the company is held ... ng to receive shareholders ... he most dangerous conse- ... owed to go back and enter ... original registration and ... *rd Cairns* in *Peel's Case.* (1867) 2 Ch. 674 Similarly in *Oakes* v *Turquand*, L. R 2 H. L 323 *Lord Chelmsford* said : "I think that the certificate prevents all recurrence to prior matters ... ription of a memorandum of ... hat all previous requisitions ... The effect of incorporating a ... body corporate a separate legal entity, or "person". If a man trusts a corporation he trusts that legal "person" and must look to its assets for payment 134 Ind. Cas 421=12 Pat L T 619=A I R. 1931 Pat. 321 (F.B) ; 33 Bom L. R. 111=A. I R. 1931 Bom. 178. Companies incorporated under Act are separate legal entities 146 Ind. Cas 56=12 Pat. 216=14 P. L. T. 149=A.I.R. 1933 Pat. 196.

Conclusiveness of certificate of incorporation.

24. (1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A declaration by an advocate, attorney or pleader entitled to appear ... the formation of a company, or by a ... manager or secretary of the company, ... requirements shall be filed with the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Notes.—In England the question whether the Registrar's certificate is conclusive was decided so far back as (1867) by *Lord Ca*... *Peel's Case*, L. R. 2 Ch. App 674, after sign... altered ... *Cairns*, ... signature of the document" The Company, however, was registered and the Registrar gave his certificate of incorporation: "It was objected that the memorandum of association had not been signed by seven or indeed by any subscribers and that the provisions of the Act had not been complied with." To that proposition *Lord Cairns* assented. But "the certificate of incorporation," he said "is not merely a *prima facie* answer but a conclusive answer to such objection. When once a certificate of incorporation is given nothing is to be enquired into as to the regularity of the prior proceedings." Similarly in *Oakes* v. *Turquand*, L. R. 2 H. L. 325. *Lord Chelmsford* observed: "I think that the certificate prevents all recurrence to prior matters essential to registration, amongst which is the subscription of a memorandum of association by seven persons, and that it is conclusive in this case that all previous requisites have been complied with" *Moosa* v. *Ebrahim*, 16 C. W. N. 937 P C.=40 C. 1=23 M. L. J 215; see also (1891) 2 Ch. 505; 2 Ch. D. 610, (1900) 2 Q. B 376; 26 A. L. J. 347=108 Ind Cas. 451

Copies of memorandum and articles to be given to members.

25. (1) Every company shall send to every member, at his request, and on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any)

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding ten rupees.

Associations not for Profit.

Power to dispense with "Limited" in name of chari-...

26. (1) Where it is proved to the satisfaction of the Local Government that an association capable of being formed as a limited company has been or is about to be formed for ... ...ion,"* ...lies or ...s, and ...rnment may, by license under the hand of one of its Secretaries, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

... or in one of those documents.

* Inserted by Act 33 of 1926.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of filing lists of members and directors and managers with the registrar.

(4) A license under this section may at any time be revoked by the Local Government, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section :

Provided that, before a license is so revoked, the Local Government shall give to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

Notes.—Where an assoc
art, science, religion, charity,
to form it on the footing that
objects only, and that no dividend shall be paid to its members, the Local Government may grant a license authorizing registration of the association with limited liability, but without the addition of the word "limited" to its name. Palmer's *Company Law*, p 350. The advantages of incorporation of such associations are great The association gains in stability, public estimation, and credit. It becomes a body corporate with perpetual succession It can adopt in lieu of company a more suitable name, such as chamber, club, college, guild, association. It can have a common seal ; it can hold property in its own name ; without the intervention of trustees, it can contract and take and defend legal proceedings in its own name ; its affairs can be conducted much more efficiently, and finally its officers and members are freed from personal liability. Under clause (4) the Local Government has power to revoke its licence after due notice, and thenceforth the words "limited" must be used. Palmer's *Company Law*, pp 250-252. With the consent of the Local Government and the sanction of the Court, such an association can alter its objects *St. Hilda's College*, (1901) 1 Ch. 556 A company thus registered can pay a pension to an outgoing secretary. *Cyclist's Journey Club* v. *Hopkinson*, (1910) 1 Ch 179.

Companies limited by Guarantee.

Provision as to companies limited by guarantee

27. (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Notes.—Prior to the English Companies Act, 1900, it was permissible to form a company limited by guarantee, with articles dividing the undertaking into shares of nominal amount—a most convenient form of association ; but section 27 of the Act of 1900 prohibited this and section 21 of the English Companies Act of 1908 which corresponds to this section has continued the prohibition. *Vide* Palmer's *Company Law*, p. 373.

PART III.

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

Nature of shares.

28. (1) The shares or other interest of any member in a company shall be movable property, taansferable in manner provided by the articles of the company.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

Right to transfer shares.—"When the joint stock companies were established the great object was that the shares should be capable of being easily transferred. *Per Lord Blackburn in Re Behia and San Fransisco Rail Co*, L. R. 3 Q. B. 595. So it is well settled that unless the articles otherwise provide, the shareholder has a free right to transfer whom he will *Weston's Case*, 4 Ch 20. A transfer even to a pauper is valid. *De Parris Case*, 4 De G & J. 544; *Lindlars Case*, W. N. (1900) 42; (1900) 1 Ch. 207. A shareholder in a company has an absolute right to transfer his shares and the transfer is complete as soon as the parties sign the deed of transfer. 71 Ind Cas. 814=1924 Lah. 173; 30 Bom. L. R 1319=A. I. R. 1928 P. C. 291. A share cannot be transferred without the sanction of the company. A. I. R. 1927 Lah. 797=101 Ind. Cas. 568. A sale by Court of shares held by a member, transfers the shares to the purchaser unless otherwise provided for. A I. R. 1928 Mad. 571=111 Ind. Cas 225. To say that the registration of the transferor's name is not a part of the contract between the transferor and the transferee, is not the same thing as saying that sale can take place without registration. 115 Ind Cas. 616; A. I. R. 1928 All. 481.

Restriction in the articles—Alike in a public or a private company a [illegible] a right in dispose of them, [illegible] *Re Bede Steam Navigation* [illegible]) 2 Ch. 349 There is nothing [illegible] place on the right to transfer *In re Cawley & Co.* 41 Ch. D. 209, 231; *Stocktone Malable Iron Co.* 2 Ch. D 101; see also (1901) 1 Ch. 279 The Articles of Association of a Company provided that the company could decline to register a transferee of its shares without assigning any reasons and that so long as a transferee's name was not registered the transferor would continue to be the owner of the shares: *Held*, that the Articles of Association of the company were meant to safeguard the interests of the company and could not affect the rights of a shareholder to transfer his shares or determine the rights and liabilities of a shareholder and his transfer *inter se*. 74 Ind Cas. 814; see also *Bahadur Sing* v *Syam Sunder Tag*, 23 Ind. Cas 900=36A. 365=12 A L. J. 629. The discretion vested in the Directors of a company to recognise or refuse to recognise transfers of shares, extends to cases of sales of shares in execution of decrees as well as to private sales. 37 Ind Cas 666=41 B. 76=18 Bom. L. R. 982. The Act also provides that the transferor shall be deemed to remain the holder of the shares until the name of the transferee is entered in the company's register. 70 Ind. Cas. 659; see also 66 Ind. Cas 586=48 C. 986. Where the law prescribes a mode of transfer, compliance with the mode is necessary before property [illegible] third persons. 70 Ind. Cas 659=45 M. 537=42 [illegible] *Magee*, (1902) 2 K B 427. In *Mc. Evan* v. [illegible] *ouse Co.* (1871) 6 Ch. App 655, where there was a transfer of shares but not in manner required by Act of Parliament, it was held that the transfer of those shares in any other form would at least amount to an equitable contract and that even if the company act upon the transfer and receive payments from the person who entered into that equitable contract and issue documents and treat him as a shareholder, it would not have the effect of making him a real shareholder. In *Moore* v. *North Western Bank*, (1891) 2 Ch. 599, where the competition was between two persons claiming title to shares registered in the name of a third person in a company, *Romer J.* observed · "As between two persons claiming title to shares in a company like this, which are registered in the name of a third party priority of title prevails, unless the claimant second in point of time, can show that, as between himself and the company, before

[illegible]

be done by the company, which, as between the company and the second claimant the company could not have refused to do forthwith; so that, as between himself and the company, he may be said to have acquired, in the words of *Lord Selborne*, "a present absolute unconditional right to have the transfer registered, before the company was informed of the existence of a better title." See also (1885) 11 App. Cas. 20; 38 Ch. D. 485; *Sethna* v. *National Bank of India*, 12 Ind Cas. 581=36 B. 334; 28 Ind. Cas. 930=42 C. 801; 43 Ind. Cas. 138=40 M. 1134; 34 Ind. Cas.

921=39 M. 509=20 C. W. N. 1054 P. C. ; but see 29 Ind. Cas. 707 and 55 Ind. Cas. 154. So a transfer is incomplete until registered. 81 App. Cas. 28 ; 7 H. L. Cas. 496 ; 38 Ch. D. 485 ; (1893) 2 Ch 555. Before registration a transferee cannot be sued for calls. *Ural Gold* v. *Pappa*, 15 T. L. R. 330.

29. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock therein specified.

Certificate of shares or stock.

Notes.—Certificates are almost invariably issued under the common seal of the company. Such a certificate specifying any share or shares or stock held by any member of the company is *prima facie* evidence of the title of the member to the share or shares or stock therein specified. (1878) 3 A. C. 1904. It is not a negotiable instrument. *Longman* v. *Bath Electric Tramways*, (1905) 1 Ch. 646, 665 ; (1893) 1 Ch. 618 ; (1875) 7 H L Cas 496 The certificate must correspond with the company's register in showing what the interest of the member is. (1902) 1 Ch. 467. Where an instrument purporting to transfer fully-paid-up shares, is certified by [illegible] ...orge *White Church & Co.* (1901) A. C. 117 ; see also (1906) A. C. 439. Share certificates are movable property. 46 B 489. Bank is not bound to recognize trust in respect of its shares but Courts can do so. A. I. R. 1931 Bom. 269=33 Bom L. R. 250=133 Ind. Cas. 241.

30. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

Definition of "member."

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Notes—This section defines the status of a subscriber of the Memorandum of Association in a different way to the position of other persons who agree to become members. *Per Brown J.* in *Nicol's Case* 29 Ch. D. 447. No allotment in this case is necessary. 5 Ch O. 325. In this case no entry is required to be made in the register 29 Ch. D 447 ; (1900) 2 Ch. 63 "It is plain" said *Lord Cairns* in *Evan's case* (1867) L R. 2 Ch. 420, "that the original subscribers are by the Act of Parliament deemed to have taken the shares set opposite their names—the object being that the public might rest with confidence on the subscribers of the memorandum becoming [illegible]
29 Ch. 421. [illegible]
an agreeme[illegible]
421 ; see als[illegible]
Memorandum of Association becomes a member *ipso facto.* 26 A. L. J. 347=108 Ind. Cas 45 ; 95 Ind. Cas. 927=24 A L. J. 691=48 A. 580=A. I. R. 1926 All. 550 ; see also 149 Ind. Cas. 869=A. I. R 1934 Sind. 45=A. I. R. 1934 Sind 39 ; A. I. R 1933 All. 334=55 A. 417=1933 A. L J. 233 From the mere omission of the entry of the names of the subscribers to the memorandum in the share register of members it does not follow that the subscribers to the memorandum are not to be deemed to have agreed to become members The first portion of the first paragraph of this section lays down a rule of substantive law and the second portion lays down a rule of procedure. The subsequent portion does not govern the earlier portion. 48 A. 480=24 A. L. J. 691=95 Ind Cas. 192.

31. (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

Register of members.

(*i*) the names and addresses, and the occupations, if any, of the members and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;

(*ii*) the date at which each person was entered in the register as a member ;

(*iii*) the date at which any person ceased to be a member.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Register of members.—A mere list of members is not a register. (1894) 2. Ch. 392. *But a register may be kept in any form provided the requirements of the* Act is satisfied. (1879) 4 A C. 547. Such a register must be properly kept. 47 C 401. The name of a firm as a member can also be entered. 8 Ch. 831; 28 T. L. R. 653; but see (1910) W. N. 187. Where transfer of shares in a company must be effected by a change in the register, the place where the register is to be kept according to law determines the locality of the shares. 122 Ind. Cas. 303=A. I. R. 1930 P. C. 10; *Att. Gen.* v. *Higgings*, 2 H E. N. 338; *Bressard* v. *Smith*, (1925) A. C. 371.

Annual list of members and summary.

32. (1) Every company having a share capital shall once at least in every year make a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list shall state the names, addr
past and present members therein mentioned,
each of the existing members at the date of ...
ferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members respectively and the dates of registration of the transfers, and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars :—

(*a*) the amount of the share capital of the company, and the number of the shares into which it is divided;

(*b*) the number of shares taken from the commencement of the company up to the date of the return;

[illegible] by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;

(*g*) the total number of shares forfeited;

(*h*) the total amount of shares or stock for which share warrants are outstanding at the date of the return;

(*i*) the total amount of share-warrants issued and surrendered respectively since the date of the last return;

(*j*) the number of shares or amount of stock comprised in each share-warrant;

(*k*) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are the managers of the company; and

(*l*) the total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act.

([illegible] shall be contained in a separate part of the [illegible] ompleted within seven days after the day [illegible] meeting in the year, and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the secretary of the company, together with a certificate from such

director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Clause (4)—The offence is a continuing one and six years is the time for recovering the penalties. *Reg* v. *Catholic Life Institution*, 48 L T. 675 An offence under this section is a criminal offence. *Park* v. *Lawton*, (1911) 1 K B 588. The fact that the directors have committed an offence by not summoning a meeting—so that they cannot make a list of members so as to comply with the section—will not be an answer, and can be convicted for both offences *Park* v *Lawton*, (1911) 1 K. B. 588. "Knowingly" and "wilfully" connote intentional default. The default is merely inadvertent and not intentional where evidence on record does not prove that the directors knowingly or wilfully authorized or permitted the company to make a default in filing with the Registrar of Joint-Stock Companies a copy of the list of the shareholders and of the summary described in s. 32 and the accused should not be convicted. 122 Ind. Cas. 88=10 Lah. 521=A. I. R 1929 Lah 836. On a summons under the section a Magistrate may go behind the registrar though it is not his business to deal with complicated question of title. 39 Ch. D. 61 ; 40 J. P. 774 ; *Gibson* v. *Burton*, L. R. 10 Q. B. 329 ; *Edmonds* v. *Foster*, (1875) 33 L. T. 690 ; *Reg* v. *Newton*, 48 L. J. M. C. 77 ; 20 T. L. R. 42 cited in *Stiebel*, p. 250. It is the bounden duty of a company and of its Directors and Managers to forward to the Registrar the summary and list and the obligation does not come to an end on the date on which by default on the part of the Company's Directors and Managers the penalty begins to accrue. Therefore every person who at any time during the default in complying with the provisions of this section acted as Director or Manager can be convicted under this section, and it is immaterial that some or all of these persons were not legally qualified to act as Directors or Managers or that they did not in fact become Directors or Managers until after the date when the penalty accrued. *Tola Ram* v. *Emperor*, 34 Ind. Cas 961 ; *Gibson* v. *Barton*, 10 Q B. 329 A clerk duly authorised by the Registrar, Joint-Stock Companies, Punjab, can institute a complaint against any person committing an offence under this section 34 Ind. Cas. 952 ; see also *Emperor* v. *Shib Das*, 8 Ind. Cas. 190 Officers of company resigning their positions as such without resigning directorship would not be free from the liability of this section. *Chhabil Das* v. *Emperor*, 23 Ind. Cas. 508. To sustain charge under s 32 (4) previous returns must be shown to be correct. 138 Ind. Cas 317=1932 Cr C 501 =33 Cr L. J 589=1932 M W N. 1157=35 M. L. J. 661 =A. I R 1932 Mad. 497.

Trusts not to be entered on register.

33 No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar.

Notes.—"It follows that if a person gives notice to the company that he claims an equitable interest in the shares registered in the name of another person, the company is not bound to take notice of such trust, and may not enter notice of it in its register, and the company will not be liable for allowing the registered holder to deal with his shares without regard to such equitable interest unless at the time of registering a transfer the directors registering the same actually know that the transfer is a wrongful one. *Vide Society Generale* v. *Walker*, (1886) 11 A C. 20 ; *Simpson* v. *Molson's Bank*, (1895) A. C 270 ; but the section does not allow a company to advance money to a shareholder after notice of the interest of another person, and then by virtue of the doctrine of tacking or otherwise, to claim priority over such other interest"—Stiebel p. 192 citing *Bradford Bank* v. *Briggs* (1881) 12A C. 29 ; *Rainford* v. *Keith*, (1905) 2 Ch 147 ; see also 33 Bom L. R. 250=A. I R. 1931 Bom. 264=133 Ind Cas 241 ; 33 Bom L R 184.

In *Re Parkins*, 24 Q B D 612, *Lord Coleridge, C J* said : "It seems to me extremely important not to throw any doubt on the principle that companies have [illegible] their *cestuies que trust*, [illegible] company's register as [illegible] other person in respect [illegible] whatever to do. They

can only look to the man whose name is upon the register. It seems to me that if it throws any doubt upon that rule, we should make the carrying on their business by joint-stock companies extremely difficult, and might involve those companies in very serious questions and the ultimate result would be anything but beneficial to the holders of shares in such companies themselves."

Registration of transfer at request of transferor.

34 On the application ... or interest in a ... iter in its register ... feree in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Notes.—"The duty of a transferee is to get his shares registered and the name of transferor removed from the register of shareholders. The duty obviously lies ... ordinary shareholder ... that his name still ... to unforeseen liabi- ... ransferor a statutory ... neglect their obvious ... Ind. Cas. 291=44A. 151; see also 71 Ind Cas 814 Where the Directors refuse to consent to the assignment by a shareholder of his share to a transferee, in order to vitiate the exercise to their powers and to justify interference by Court it must distinctly be made out that the directors have been acting from some improper motive or arbitrarily and capriciously 33 Bom. L. R. 184

Transfer by legal representative.

35. A transfer of the share or other interest of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Notes—Where shares are registered in the joint names of several executors (*Barton* v. *North Staffordshire Railway*, 38 Ch. D. 458), they must all be parties to a transfer even where the register contains a note that they are executors. *Barton* v. *London and North Western Railway* (1890) 24 Q. B D. 77—Stiebel, p. 298 Where a member of a company dies, his shares, as personal estate, vest in his executors or administrators, and the estate is liable (*Baird's Case*, 5 Ch 725); but the executors or administrators do not *ipso facto* become members of the company, nor is the company entitled, without their consent, to register them as members Such registration (as members) may involve them in a personal liability, and to justify it there must be some distinct and intelligent request on their part *Buchan's Case*, 9 App Cas. 588. Where registered as members, there should be a clean registration without any reference to their representative capacity. They may choose the order in which *their names are to stand. Re Saunders & Co*, (1901) 1 Ch. 415 This section enables the legal representatives of a deceased member, without himself becoming a member, to transfer the shares of the deceased—Palmer's *Company Law*, p 139.

Inspection of register of members.

36. (1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions, as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of six annas for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which

the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall be liable to the like penalty, and the Court may by order compel an immediate inspection of the register.

Notes.—The register of members commencing from the date of the registration of the company is by this section, to be kept at the registered office of the company and such register by clause (1) is to be open for inspection by members gratis, and for inspection by any other person on payment of one rupee or such less sum as the company may prescribe for each inspection The right of inspection does not carry with it the right to take copies *Balaghat Co*, (1901) 2 K B. 665. But the right is also given to require a copy of such register or any part thereof on certain terms. The right terminates on a winding up. *Re Kent Coalfields Syndicate*, (1898) 1 Q. B. 754.

Clause (3)—Refusal means distinct and definite refusal. *Rex* v *Wills*, 3 Ad. & El 447 ; 8 Ad. & El 901 A member has the right to have it inspected by his solicitor. *Bevan* v *Webb*, (1901) 2 Ch 59, 75 The Court will compel production, irrespective of motive. *Davies* v. *Gaslight & Coke Co.*, (1909) 1 Ch 248 cited in Palmer's *Company Law*, p. 125.

Power to close register.

37. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Notes—A company is entitled to refuse to register a transfer of shares when the application is made during the time the transfer books of the company are closed and after a public notification in accordance with the provision of this section, *vide*, *Mothoo Mohun* v. *The Bank of Bengal*, 3 C. 392=1 C. L. R. 507.

Power of Court to rectify register.

38. (1) If—

(*a*) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members of a company ; or

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arise between members or alleged members, or between members or alleged members on the one hand and the company on the other hand ; and generally may decide any question necessary or expedient to be decided for rectification of the register :

Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure, 1908,* on the grounds mentioned in section 100 of that Code.

r wind-
Court
th the
Cas. 770 ;
55 Ind Cas. 751. An order for rectification of company's register cannot be passed

* V of 1908

in an action to which the transferor is not a party. 111 Ind. Cas. 337=A. I. R. 1928 P. C. 291. A Judge is not bound to decide in a proceeding under this section a serious question of title. *Union Indian Sugar Mills* v. *Jai Deo*, 19 A. L. J. 937=65 Ind. Cas. 291. The jurisdiction under the section is unlimited. In a simple ...sential, it is desirable to apply under this ... an action should be brought. *Romesh* v. ... lso A. I. R. 1328 Mad. 571=111 Ind. Cas. ... cover cases of refusal to register. *Ibid.* Civil Courts have jurisdiction to decide questions falling within the purview of s. 38. A. I. R. 1928 Lah 234=108 Ind. Cas. 192. An appeal lies from an order passed under this section, *resulting from the issue, which need not necessarily be an issue of law* only. 19 A. L J 937=65 Ind Cas. 291; but see 41 B. 76=37 Ind. Cas 666=18 Bom. L. R. 982. Where suit for recovery of all money is barred, name continued as shareholder and subsequent forfeiture of shares does not revive debt. 10 O. W. N. 447 A. I. R. 1933 Oudh. 285.

A company was incorporated in 1902 with a share capital of seven lacs of rupees made up of fourteen hundred shares of five hundred rupees each. Two hundred of those shares were not issued. At a meeting held in November 1919, at which five directors were present, a resolution was passed that the two hundred shares should be sold to three directors then present at the rate of Rs. 1,200 per share in proportion to their holdings in the share capital of the company. In accordance with that resolution the shares were allotted to the three directors. The Articles of Association of ... ast three for a director's meeting The company ... and two of the five directors who were present ... who did not purchase any of the two hundred ... liquidators were advised that the allotment ... red shares were concerned under section 91 B. ... High Court under this section to pass an ... ter by deletion of the names of 3 directors in respect of 200 shares purchased by them on repayment to them of the purchase money. *Held*, that the allotment was invalid. 64 Ind. Cas. 933=23 Bom L. R. 1104. See also 28 Ind. Cas. 583=40 B. 134; 29 Ind. Cas 770; 49 Ind. Cas. 288; 18 Ind. Cas. 481; 17 Ind. Cas 640.

Notice to registrar of rectification of register.

39. In the case of a company required by this Act to a file a list of its members with the registrar, the Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be filed with the registrar.

... e register, the name of the ... igh with a pen in the regis- ... an order of the High Court ... *ipbuilding Co.* (1865) 34 B. ...

Register to be evidence.

40. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Notes—The register is to be *prima facie* evidence and is not conclusive. *Rees Rivie & Co* v. *Smith* L. R. 4 H. L. 80; 39 Ch. D. 61. The register of members is *prima facie* evidence of membership and the burden of proving allegations as to conditions and failure to send notice of allotment is on the person alleging. *Waryam Singh* v. *The Official Liquidator*, 8 L. L. J. 240=95 Ind. Cas. 252=A. I. R. 1926 Lah. 414; See also 142 Ind. Cas. 704=33 P. L. R 973=A. I R 1933 Lah 108; A. I. R. 1933 Lah. 1016. Mere entry of shareholder's name in company's register does not amount to allotment. 141 Ind. Cas. 120=64 M. L. J. 130=1933 M. W. N. 157=56 Mad. 391=A. I. R. 1933 Mad. 320. Entries in documents of company are presumed to be true. A. I. R. 1935 Lah. 157.

Power for company to keep branch register in the United Kingdom.

41. (1) A company having a share capital may, if so authorised by its articles, cause to be kept in the United Kingdom a branch register of members (in this Act called a British register).

(2) The company shall, within one month from the date of the opening of any British register, file with the registrar notice of the situation of the office where such register is kept and, in the event of any change in the situation of such office or of its discontinuance, shall within one month from the date of such change or discontinuance, as the case may be, file notice of such change or discontinuance.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

N. B.—This section corresponds to section 34 of the English Act.

Regulations as to British register.

42 (1) A British register shall be deemed to be part of the company's register of members (in this section called the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the locality wherein the British register is kept.

(3) The company shall transmit to its registered office in India a copy of every entry in its British register as soon as may be after the entry is made; and shall cause to be kept at such office, duly entered up from time to time, a duplicate of its British register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a British register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a British register shall, during the continuance of that regis-

[illegible] British register, and there-

[illegible] to the principal register.

(6) *Subject to the provisions of this Act, any company may, by its articles,* make such regulations as it may think fit respecting the keeping of a British register.

N B—This section corresponds to section 35 of the English Act.

Issue of share-warrants to bearer.

43. *A company limited by shares, if so authorised by its articles, may, with* respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share-warrant.

Effect of share-warrant.

44. A share-warrant shall entitle the bearer thereof to the shares or a stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

Notes—A stock or share-warrant is, by mercantile usage, a negotiable instrument; *Webe, Hale & Co. v. Alexander,* (1905) 93 L T 339 The bearer of a stock or share-warrant must produce the share-warrant before he is entitled to exercise any of the rights of a member. *Wedgwood Coal and Iron Co* 6 Ch D. 627.

Registration of name of bearer of share-warrant.

45. The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled

Position of bearer of share-warrant.

46. The bearer of a share-warrent may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

Entries in register when share-warrant issued.

47. (1) On the issue of a share-warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely :—

(i) the fact of the issue of the warrant ;

(ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number ; and

(iii) the date of the issue of the warrant.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully continues or permits the default shall be liable to the like penalty.

Notes.—When a share-warrant is issued, the name of the prior holder of the share is struck out of the register of members. Hence, whilst the share-warrant is outstanding there will be no registered holder Palmer's *Company Law*, p. 141.

Surrender of share-warrant.

48. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members ; and, on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.

Notes.—It would seem that the bearer of a stock or share-warrant must, before he is entitled to exercise any of the rights of a member in respect of the stock or shares comprised in his warrant, produce such warrant to the company *Cf. Wedgwood Coal and Iron Co.*, (1877) Ch. D. 627—Cited in Stiebel p 311. A member cannot surrender his share and company cannot accept the surrender except as forfeiture. A shareholder when his shares are forfeited ceases to be a member but a shareholder who surrenders his share does not cease to be member. 107 Ind. Cas. 594=A. I. R. 1928 Lah 240. To hold that a company can by resolution of its Directors accept surrender of shares would be to allow a company to reduce its capital at its pleasure. *Ibid* ; see also *Bellerby* v *Rowland*, (1902) 2 Ch. 14.

Power of company to arrange for different amounts being paid on shares.

49. A company, if so authorised by its articles, may do any one or more of the following things, namely :—

(1) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares ;

(2) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up.

(3) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Notes.—A company will not have powers under this section unless they are conferred by its articles.

Power of company limited by shares to alter its share capital.

50. (1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows, (that is to say), it may—

(a) increase its share capital by the issue of new shares of such amount as it thinks expedient ;

(*b*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;

(*c*) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination.

(*d*) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;

(*e*) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section with respect to sub-division of shares must be exercised by special resolution.

(3) Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(4) If a company makes default in complying with the requirements of sub-section (3), it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

Clause (b)—The doubt raised in *Wakefield Rolling Stock* (1892) 3 Ch. 165 is set at rest by this clause There is no reason why the articles should not entrust the other powers to the directors—they would seem to be powers relating to the management of the company. *Mosley* v. *Koffyfontein*, (1910) 2 Ch. 382 cited in Steibel, p. 83.

Case (1879) 9 Ch 1, *Sewell's Case* (1868) 3 Ch. 131.

51. (1) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted any of its shares into stock, or reconverted stock into shares, it shall within fifteen days of the consolidation and division conversion or re-conversion, file notice with the registrar of the same, specifying the share consolidated and divided, or converted, or the stock re-converted.

Notice to registrar of consolidation of share capital, conversion of shares into stock, etc.

(2) If a company makes default in complying with the requirments of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

52. Where a company having a share capital has converted any of its shares into stock, and filed notice of the conversion with the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock ; and the register of members of the company, and the list of members to be filed with the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

Effect of conversion of shares into stock

Notes.—Where any shares have been converted into stock the register must show the amount of stock held by each member in lieu of the particulars relating to shares. Where payment in full is made, stock can be issued without going through the formality of issuing shares—but the issue of forms or partly paid stock is *ultra vires*—and it has been held that the holders of stock so issued are not members. (1912) 1 Ch. 72.

Notice of increase of share capital or of members.

53. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the registrar, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

(2) If a company makes a default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Notes—Where the articles empower the directors to increase the capital with sanction of a general meeting, and such a meeting authorises the directors to increase the capital to a specified amount, duty is forthwith payable on such amount. *Att. Gen.* v. *Anglo Argentine Tramways*, (1900) 1 K B. 676.

Reorganization of share capital

54. (1) A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation *of shares of different classes or by the division of its shares into shares of* different classes:

Provided that no preference or special privilege attached to or belodging to any class of shares shall be interfered with except by resolution passed by a majority in number of shareholders of that class holding *three fourths of the* share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section, a certified copy thereof shall be filed with the registrar within twenty-one days after the making of the order, or within such further time as the Court may allow, , and the resolution shall not take effect until such a copy has been so filed.

Notes.—"The proviso in the section is *very badly drafted, but it will be observed* that it does not speak of the majority in number of the shareholders, but of a majority in number of shareholders, at a meeting and it is thought that if a meeting of the shareholders be called the majority at that meeting will be sufficient, if they are present in person or by proxy and voting in favour of the scheme by shareholders representing three fourths of the capital of the class. At the confirmatory meeting a bare majority of the members of the class present in person or by proxy will be enough. The application to the Court, it is thought, should be by petition."—Stiebel, p. 318. Company proposing to abolish existing classes of shares and to creating new classes of shares—this section does not contemplate such a mode of reorganization. This section applies only to two modes of reorganizing share capital, namely, (1) consolidation of shares *of* different classes into shares of one class, and (2) division of shares of one class, into shares of different classes. 30 Bom. L. R. 598=A. I. R. 1929 Bom. 38=110 Ind. Cas. 649.

Reduction of Share Capital.

Reduction of sharecapital.

55. (1) No company limited by shares shall have power to buy its own shares unless the consequent reduction of capital is effected and sanctioned in manner hereinafter provided

(2) Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its sharecapital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

(*a*) extinguish or reduce the liability on any of its shares in respect of share capital not paid up ; or

(*b*) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up sharecapital which is lost or unrepresented by available assets ; or

(*c*) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up sharecapital which is in excess of the wants of the company,

and may, if and so far as is
the amount of its sharecapital and

(3) A special resolution under
for reducing sharecapital.

Notes—The reduction of capital without the assent of the Court is opposed to this section. 52 M. 915=A. I. R. 1929 Mad. 773=120 Ind. Cas. 71. Reduction of capital should be made under statutory authority or by forfeiture in strict accordance with procedure, if any, laid down in that behalf in the articles of association. 125 Ind Cas 419=54 B 178=A I.R. 1930 B. 267 ; see also 128 Ind Cas. 641=A I. R. 1930 P. C. 302=1930 A. L. J 1345 ; 110 Ind. Cas. 421 ; 83 Ind. Cas. 94.

Clause (2).—In order to reduce capital, the company must be authorised by its articles. Power in the memorandum will not do. 88 L T. 791 ; (1893) W. N. 82. Where the articles do not contain any such powers, they are to be altered by special resolution. 31 Ch. D. 166 ; 9 Ch D. 11 ; *Oregon Mortgage Co*, (1910) S. C. 964, Court of Session Stock may be reduced under these powers *Household Property and Investment Co*, (1912) W. N 110.

Application to Court for confirming order

53. Where a company has passed and confirmed a resolution for reducing sharecapital, it may apply by petition to the Court for an order confirming the reduction.

Notes—An application is then made by petition to the Court for an order confirming the reduction. The Court means the Court having jurisdiction to wind up the company. *Vide Rugby Gas Co*, (1899) W N 127, (1908) W. N. 203 ; (1911) W. N. 235.

Addition to name of company of "and reduced."

57. On and from the confirmation by a company of a resolution for reducing sharecapital, or where the reduction does not involve either the diminution of any liability in respect of unpaid sharecapital or the payment to any shareholder of any paid-up sharecapital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company :

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid sharecapital or the payment to any shareholder of any paid-up sharecapital, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

Notes.—The words "and
warning to the public. (1892)
without leave will deprive the
T. Clark & Co, (1911) S C. 243. Where the scheme for reduction is abandoned the

words may be discontinued with the sanction of the Court. 53 L. T. 736 ; 5 Ch. D. 535. In case of companies carrying on business abroad this practice may be dispensed with. *Vide* (1890) W. N. 89 ; (1906) W. N. 182 ; (1910) 1 Ch. 414.

Objections by creditors and settlement of list of objecting creditors.

58. (1) Where the proposed reduction of sharecapital involves either diminution of liability in respect of unpaid sharecapital, or the payment to any shareholder of any paid-up sharecapital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

[illegible] of creditors being settled. *Lam-* [illegible] as do not consent must be paid [illegible] Court *Vide Sharp* v. *Stewart* & *Co*, (1867) 5 Eq. 155 ; 31 W R. 781 ; (1885) W N. 61. The debenture-holders are creditors 17 W. R 304 (Eng) ; 12 Ch. D. 254. But a creditor can object only in cases mentioned in clause (1). (1919) 1 Ch. 28 ; (1891) 2 Ch 354

Power to dispense with consent of crediter on security being given for his debt.

59. Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount (that is to say),—

(*i*) if the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim ;

(*ii*) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

Notes.—A lessor is entitled to have a sum appropriated to answer future rent. *Telegraph Construction Co*, (1870) 10 Eq. 384 ; *Palace Billiard Rooms*, (1912) S. C. 5. Suit for arrears of allotment and call money is small cause suit. 143 Ind. Cas. 723 = 34 P. L. R. 592 = A. I. R. 1933 Lah. 657.

Order confirming reduction.

60. The Court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

[illegible] but who takes no action, will even [illegible] to have consented to the reduction. [illegible] 434. When the requirements of the [illegible] confirm the reduction. But it may [illegible] not fair and equitable as between [illegible] (1902) 2 Ch. 178. [illegible] 229 ; (1894) A. C. 399. See also

Registration of order and minute of reduction.

61. (1) The registrar on production to him of an order of the Court confirming the reduction of the sharecapital of a company, and on the filing with him of a certified copy of the order and of a minute (approved by the Court) showing, with respect to the sharecapital of the Company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share-capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the sharecapital of the company is such as is stated in the minute.

Notes—The minute, together with a copy of the order, has to be filed with the Registrar, who gives a certificate. This certificate is conclusive evidence of reduction. *Re. Walker and Smith Ltd* 72 L. J. Ch. 572 ; see also (1900) 2 Q. B. 376. (1903) W. N. 82 (Eng)

62. (1) The minute when registered shall be deemed to be substituted for

Minute to form part of memorandum.

embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Liability of members in respect of reduced shares

63. (1) A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be), the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute :

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then—

(i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt, or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration ; and

[illegible] the application of any [illegible] if it thinks fit, settle [illegible] make and enforce calls [illegible] they were ordinary

[illegible] contributories among themselves.

64. If any officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such *concealment or misrepresentation as aforesaid, every* such officer shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

Penalty on concealment of name of creditor.

65. In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

Publication of reasons for reduction.

66. A company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so anthorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share-capital under the provisions of this Act.

Increase and reduction of sharecapital in case of a company limited by guarantee having a share-capital.

Registration of Unlimited Company as Limited.

67. (1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited or any company already registered as a limited company may re register under this Act but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of, the company before the registration, and those debts, liabilities, obligations and contracts may be enforced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part.

Registration of unlimited company as limited.

(2) On registration in pursuance of this section, the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company ; but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

68. An unlimited company having a sharecapital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :—

Power of unlimited company to provide for reserve share-capital on re-registration.

(*a*) increase the nominal amount of its sharecapital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called *up except in the event and for the purposes of the company being wound up ;*

(*b*) provide that a specified portion of its uncalled sharecapital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

69. A limited company may by special resolution determine that any portion of its sharecapital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the

Reserve liability of limited company

company being wound up, and thereupon that portion of its sharecapital shall not be capable of being called up except in the event and for the purposes aforesaid.

Notes.—There is nothing to prevent a limited company providing by its Memorandum of Association that part of its capital shall only be capable of being called up in the event and for the purposes of a winding up, and such a provision would be unalterable. *Ashbury* v *Watson*, 30 Ch. D. 376. Where there is no provisions in the Memorandum of Association, such a provision may also be made under this section by special resolution. It is well settled that a power to charge uncalled capital conferred by the Memorandum or Articles of Association of a company is good. *Fyle Works*, (1890) 44 Ch. D. 534 ; *Newton* v. *Anglo-Australian Investment Co.*, (1895) A. C. 244.

Unlimited Liability of Directors

Limited company may have directors with unlimited liability.

70. (1) In a limited company the liability of the directors or of any director may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the person holding that office will be unlimited and the promoters and officers of the company, or one of them, shall, before the persons accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director or proposer makes default in adding such a statement or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default. but the liability of the person elected or appointed shall not be affected by the default.

Special resolution of limited company making liability of directors unlimited

71. (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director.

(2) Upon the confirmation of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum, and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made ; and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

Registered office of company

72 (1) Every company shall have a registered office to which all communications and notices may be addressed.

(2) Notice in writing of the situation of the registered office, and of any change therein, shall be filed with the registrar who shall record the same.

(3) If a company carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.

Notes.—Change of registered office becomes effective only on notification of the same to Registrar. Mere resolution to change is not enough. A. I. R. 1931 Cal. 692=58 C. 715=133 Ind. Cas 321.

Publication of name by a limited company.

73. Every limited company—

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible and in English characters, and also, if the registered office be situate in a place beyond the local limits of the ordinary [illegible] in the characters of one of the ver- [illegible] ple characters on its seal ;

(c) shall have its name mentioned in legible English characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

Notes—The Legislature whilst allowing limited liability desires by this means to make the company itself continually bring to the notice of those who deal or may deal with it the fact that it is limited—Palmer's *Company Law*, p 248. Abbreviations such as Co and Ltd may be used (1912) 106 L. T. 544. If any company omits to comply with the provisions of this section that will not preclude it from enforcing any rights it has. (1902) 2 Ch 354 ; (1901) 18 Rep. Pat. Cas. 185—cited in *Stiebel* p. 322. But where the pronote is on a sheet of paper printed with the name of the company, the requirements are fulfilled 67 Ind. Cas. 941=24 Bom. L. R. 355.

Penalties for non-publication of name.

74. (1) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

(2) If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any bill head, letter paper, notice, advertisement or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Notes—This section provides that if any officer signs or authorises to be signed on behalf of the company any bill of exchange, promissory note etc, wherein the name of the company is not mentioned in the manner specified, he shall be personally liable to the holder of any such bill of exchange, etc., for the amount thereof unless the same is duly paid by the company. 61 L. T. 23 ; 21 T. L. R. 510—cited in Palmer's *Company Law*, p. 248 ; see also *Penrose* v. *Martyr*, E. B. & E. 499 ; 70 L. T. 376.

Publication of authorised as well as subscribed and paid-up capital.

75. (1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent

position and equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.

(2) Any company which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand rupees

Meetings and Proceedings.

76. (1) A general meeting of every company shall be held once at the least in every year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding five hundred rupees.

Annual general meeting

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

Notes.—In the English Act the words "calender year" are used for the word
der year commences on the 1st
'ark v. *Lawton*, (1911) 1 K. B. 588.
Ind. Cas 349; but see 54 Ind.
It is liable. 38 Ind. Cas. 437=21 C.
Ind. Cas. 693=A. I R 1934 Cal. 624=A. L. R. 1934 Cal 652.

77. (1) Every company limited by shares and registered after the commencement of this Act shall, within a period of six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting.

Statutory meeting of company

(2) The directors shall, at least ten days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company or, where there are less than two directors, by the sole director and shall state—

(*a*) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted distinguished as aforesaid;

(*c*) an abstract of the receipts of the company whether from its sharecapital or from debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company;

(*d*) the names, addresses and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company;

(*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the

receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company.

(6) Every director of the company who knowingly and wilfully authorises or permits a default in complying with the provisions of sub section (2) or sub-section ( ) shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(7) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting

(8) The members of the company present at the meeting shall be at liberty to discuss any matters relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(9) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(10) If a petition is presented to the Court in manner provided by Part V for wind [illegible] report or [illegible] that the [illegible] or a meeting [illegible]

(11) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

Notes.—The obvious purp[illegible] is to put the shareholders of th[illegible] important facts relating to the [illegible] monies received, what contracts entered into, what sums spent on preliminary expenses, etc. Furnished with these particulars, the shareholders are to have an opportunity of meeting and discussing the whole situation—the management, method and prospects of the company. If the shareholders fail to do so, they have only them- [illegible] held. *Gardner* v. *Iredale*, (1912) W. N. 93 cited in Stiebel, p. 380. An offence is not punishable under the Act after the Act is repealed. 41 Ind. Cas. 1008=31 P. R. (1917), Cr.

Calling of extraordinary general meeting on requisition.

78. (1) Notwithstanding anything in the articles, the directors of a company which has a sharecapital shall, on the requisition of the holders of not less than one tenth of the issued sharecapital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith call a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution and, if the directors do not call the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves call the meeting.

(5) Any meeting called under this section by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

Notes.—The directors shall call [illegible]
signed by a specified proportion [illegible]
L. R. 10 Ch. 606. The mere fact [illegible]
requisition could not be put [illegible]
obligation to call the meeting. [illegible]
In the case of shares held [illegible]
W. N. 164. Persons requisitioning a meeting under this section can not validly call a meeting till the time mentioned in the requisition expires. (1901) 2 Ch. 431.

Provisions as to meetings and votes.

79. In default of, and subject to, any regulations in the articles,—

(i) a meeting of a company may be called by fourteen days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the First Schedule;

(ii) five members may call a meeting;

(iii) any person elected by the members present at a meeting may be chairman thereof; and

(iv) every member shall have one vote

Notes—In default of, and subject to any regulations in the articles any five members of a company may summon a meeting. The Regulations are applicable where there are no directors to call a meeting (1878) W. N. 140, see also (1901) 2 Ch. 431. Shareholders having knowledge about business to be transacted at a meeting cannot complain of the insufficiency of notice. 32 C. W. N. 1038 P. C.=110 Ind Cas. 195=30 Bom L R. 115 P. C Where votes are recorded on amendment proposed, but where votes on the substantive proposition are recorded by proxies in a meeting of the company held for changing its memorandum such votes were good. 30 Bom L. R 197=A. I. R. 1928 Bom. 80=108 Ind. Cas. 465. As regards votes by proxies *vide Ibid.* An omission to mention any secret arrangement would constitute a serious defect. 90 Ind Cas. 580=26 Bom. L. R 987=A. I. R, 1925 Bom. 49.

Representation of companies at meetings of other companies of which they are members.

80. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the persons so authorised shall be entitled to exercise the same powers on behalf of the Company which he represents as if he were an individual shareholder of that other company.

[illegible] representative of a company under a resolution [illegible] be properly admitted by the chairman on the [illegible] resolution, *Colonial Gold Reef* v. *Free State* (1914) 1 Ch 382=83 L J. Ch 303 A person appointed under section 81 to represent a limited company interested as shareholders can be taken into account in considering whether or not there is a quorum of shareholders present at a meeting convened to confirm a special resolution for reduction of capital (1920) W. N. 274.

Extraordinary and special resolutions.

81. (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at

a general meeting of which notice specifying the intention to propose the resolution as an extraordinay resolution has been duly given.

(2) A resolution shall be a special resolution when it has been—

(a) passed in manner required for the passing of an extraordinary resolution; and

(b) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman on a show of hands that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a poll may be demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

(5) In a case where, if a poll is demanded, it may in accordance with the articles be taken in such manner as the chairman may direct; it may, if the chairman so directs, be taken at the meeting at which it is demanded.

(6) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by the articles of the company

(7) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

requires, only one meeting but intention to propose the resolution tion requires two meetings at an interval of not lees than fourteen days, and not more than one month. If the articles so provide two meetings may be called by the same notice. (1905) 2 Ch. 15 (C. A)—Palmer's *Company Law*, p. 238. Amendment can be allowed by chairman. 90 Ind. Cas. 580.

Where special resolutions are necessary—*vide* Section 11(4), 12, 20, 50 (2), 55, 69, 71, 142, 162(1), 203(2), and 213.

Members.—A member is one who is on the company's register as a member and who has agreed to become a member. *Pender v Lushington*, 6 Ch D. 70. An executor of a deceased person may vote. (1895) 1 Ch. 456; (1894) 1 Q. B 622; (1900) 1 Ch. 656.

Proxy.—No member is entitled to vote by proxy unless the articles of association authorise such voting. *Harven v. Philips*, 23 Ch D 14; see also 1 C. L. 1 be given to a member. (1902) 18 T. L. R. at the date when the proxy is to be used is 3. A member using the proxy need not state . L. R. 495. As regards rules regarding proxy *vide* 108 Ind. Cas. 465.

Clause. (3).—Unless a poll is demanded the declaration of the chairman is conclusive. 11 Ch. D. 719; (1900) 2 Ch. 419; (1901) 1 Ch. 518 But where the

1 Ch. 1.

At a meeting for extraordinary resolution or for a special resolution a declaration of the chairman on a show of hands that the resolution is carried is conclusive evidence and the minutes of the meeting are not admissible in evidence to show that

the declaration of the chairman is unwarranted. 110 Ind. Cas. 649=30 Bom. L. R. 598=A. I. R. 1929 Bom 38.

Registration and copies of special and extraordinary resolutions

82. (1) A copy of every special and extraordinary resolution shall, within fifteen days from the confirmation of the special resolution or from the passing of the extraordinary resolution, as the case may be, be printed or typewritten and filed with the registrar who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one rupee or such less sum as the company may direct

(4) If a company makes default in so filing with the registrar a copy of a special or extraordinary resolution, it shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(6) Every officer of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Notes—A copy of every special and extraordinary resolution has to be printed and forwarded to the Registrar and a copy to be annexed to or embodied in the articles A registrar can refuse to register alteration of article. 141 Ind. Cas. 177=63 M. L J 917=36 M L. W 942=A I R 1933 Mad 129

Minutes of proceedings of general meetings and of its directors.

83. (1) Every company shall cause minutes of all proceedings of general meetings and of its directors to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

Signed by the Chairman—Such signature may be put at any time *Royney's Case*, 4 De G J. & S. 426. After the signature of the Chairman the minutes of the meeting should not be altered. 42 Ch. D. 209.

Clause (3)—The Court, notwithstanding the minutes are made conclusive by the articles, may look and consider the regularity of the notice. *Betts & Co. v. Macnaghten*, (1910) 1 Ch. 420 cited in Palmer's *Company Law*, p 244.

"*Directors.**

Directors obligatory.

83A (1) Every company registered after the commencement of this Act shall have at least two directors.

(2) This section shall not apply to a private company.

* This heading and sections 83 A and 83 B have been inserted by Act 11 of 1914

is thus summarised by *James L. J.* : "A trustee is a man who is the owner of the property, and deals with it as principal owner and master subject only to an equitable obligation to account to some person to whom he stands in relation of trustee and who are his *cestuis que trust* The same individual may fill the office of director and also be a trustee having property, but that is a rare exceptional and casual circumstance. The office of director is that of paid servant of the company. A director never enters into contract for himself but he enters into contract for his principal, that is, for the company of whom he is a director and for whom he is acting. He can ... sued on them unless he exceeds his authority." ... disclose his knowledge of the company, then that ... the company though in general the knowledge of ... knowledge of the company. 33 Bom. L. R. 184.

83B In default of and subject to any regulations in the articles of a company other than a private company—

Appointment of directors.

(*i*) the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors shall have been appointed ;

(*ii*) the directors of the company shall be appointed by the members in general meeting ; and

(*iii*) any casual vacancy occurring among the directors may be filled up by the directors, but the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director."

Casual vacancy.—A casual vacancy means a vacancy occurring by death, resignation, or bankruptcy and not by efflux of time. 34 L. W. 746=61 M. L J. 724.

84. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in relation to any intended company or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has, by himself or by his agent authorised in writing—

Restrictions on appointment or advertisement of director.

(*i*) signed and filed with the registrar a consent in writing to act as such director ; and

(*ii*) save in the case of a company limited by guarantee and not having a share capital, either signed the memorandum for a number of shares not less than his qualification (if any) or signed and filed with the registrar a contract in writing to take from the Company and pay for his qualification shares (if any).

(2) On the application for registration of the memorandum and articles of a company the applicant shall file with the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable

...

date at which the company is entitled to commence business.

Notes.—The word "articles" in this section refers to the articles in force, whether in their original form or as altered by special resolution. Where an

agent signs the consent he must produce his authority. An intended director who subscribes the memorandum for his qualification becomes bound on incorporation to take the shares even though the company never commences business.—Palmer's *Company Law*, p. 182.

85. (1) Without prejudice to the restrictions imposed by section 84, it shall be the duty of every director who is by the articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

Qualification of director.

(2) The office of director of a company shall be vacated if the director does not, within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

Object.—The qualification is fixed in order to give the director personal interest in the undertaking *Archer's Case*, (1892) 1 Ch. 322. A joint holding gives the requisite qualification. *Glory Paper Mills*, 3 Ch 473; *Grundy* v *Briggs*, (1910) 1 Ch 441. If the qualification is increased while a person is serving as director, the failure on his part to increase the number of shares will not make him vacate his office (1902) 2 K B 589; see also 23 Ind. Cas 718

86. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification: Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid.

Validity of acts of directors.

Notes.—A director must be a person who has been duly appointed. *Jenner's Case*. 7 Ch D, 132. But the effect of this section is where a person is allowed to [illegible]), persons dealing with such [illegible] to act and the company [illegible] 34 But this [illegible] the defect. [illegible] and criminal [illegible] on, L. R. 10 Q. B. 322; *Rex* v. *Lawson*, (1905) 11 K. B. 541; *Coventry and Dixson's Case*, (1880) 14 Ch. D. 660; *New Per Consols*, (1898) 1 Q. B. 573. Where a *defacto* director signs a plaint his act is validated by this section. 134 Ind Cas. 737=9 Rang. 56 =A. I. R. 1931 Rang 139 Where defaults raise question of competency of director to sign and verify plaint, they are entitled so to crossexamine him as to expose all facts bearing on that question 130 Ind Cas 843=A I. R. 1931 Rang. 54 Where directors themselves have not paid allotment money on their shares, allotment of shares by them as directors to others is valid. A I R 1935 Lah. 464 *vide* also 36 A. 412; 10 Ind. Cas. 748, 29 Ind Cas 567; 10 Ind Cas 515; 125 Ind. Cas. 419; 130 Ind. Cas. 843; 116 Ind. Cas. 724; 109 Ind. C 662; 101 Ind. Cas. 568.

List of directors to be sent to registrar.

87. (1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors, and file with the registrar a copy thereof, and from time to time file with the registrar notice of any change among its directors or managers.

(2) If default is made in complying with this section, the company shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Managers—Unless a person is in charge of the entire business of a company he can not be deemed to be the manager thereof. A person in charge of the business of a branch of a bank, therefore, does not come within the purview of the term "manager" as used in this section. *Basant* v. *Emperor*, 43 Ind Cas. 791=19 Cr. L. J. [illegible] company are bound to know, or [illegible] onstitution of the company, and its [illegible] and articles, but they are not [illegible] s kept as [illegible] appoint- [illegible] pany and [illegible] o search [illegible]

Pudumjee v. *N. H. Moos*, 27 Bom. L. [illegible] commit offence by not filing notice of [illegible] period has been prescribed within which such notice must be given. 131 Ind Cas. 592=35 C. W. N. 227; see also A. I R. 1932 Mad. 497=33 Cr. L. J. 589=1932 Cr. C. 501.

Contracts.

Form of contracts.

88. (1) Contracts on behalf of a company may be made as follows (that is to say):—

(*i*) any contract which, if made between private persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;

(*ii*) any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be [illegible] hori- [illegible] law and shall bind the company and its successors and all other parties thereto, their heirs, or legal representatives, as the case may be.

Notes—A contract entered into by the promoters of a company prior to its incorporation, is not binding on the company; nor can a company ratify or adopt such a contract; it may enter into a new contract embodying the terms of that contract of adopting it. The mere affixing of a copy of an agreement to the Articles of Association is not equivalent to effecting a new contract by the company and would not estop the official liquidator from objecting to a claim on behalf of the [illegible]

[illegible] 59=19 C. W. N. 621=28 M. L. J. 59=17 M. L. T. 443 (P. C.). Once the rights of parties dealing with a registered Company have become fixed by a contract the company cannot by a resolution subsequently passed by it alter those rights. *Allen*

Bills of exchange and promissory notes.

89. A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting, under its authority, express or implied.

Notes.—In *Chapman* v *Smethurst*, (1909) 1 K. B. 927 *Lord Justice Kennedy* said … n in *Lindley on Companies.* 6th Ed … estion is in every case one of con … company or not? Does it really purport it so to be? For, although given for the purposes of the Company, the bill or note may not even purport to bind it. If on the true construction of the instrument the bill or note is the bill or note of the company, the company will be liable on it, and not the individuals whose names are on it, unless the bill or note is the bill or note of both. On the other hand, if on the true construction of the bill or note it is not the bill or note of the company, the persons whose names are upon it will be liable upon it, whether they intended to be so or not." Therefore "it is of the utmost importance that the name of a person or firm to be charged upon a negotiable document should be clearly stated on the face or back of the document. so that … ment pa … *Das* v. … (P. C.). it must … his name is the real name of the person liable upon the bill. 89 Ind. Cas. 328. When a person is not specifically authorized either as a managing agent or otherwise to execute or make a promissory note in his own name so as to bind the company the company will not be liable. A. I. R. 1930 All. 778. The ignorance of the Manager of the Bank of the terms of the Articles of Association does not affect this power to make a transfer of negotiable instrument. 80 Ind. Cas. 741=A. I. R. 1924 Lah. 462.

Execution of deeds abroad.

90. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India ; and every deed signed by such attorney, on behalf of the company, and under his seal, where sealing is required, shall bind the company, and have the same effect as if it were under its common seal.

Notes—Under this section the company can authorise any person, as the attorney of the company, to execute, under his seal, deeds outside British India.—*Vide* Palmer's *Company Law*, p. 259.

Power for company to have official seal for use abroad.

91. (1) A company whose objects require or comprise the transaction of business beyond the limits of British India may, if authorised by its articles, have for use in any territory, district or place not situate in British India, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district or place not situate in British India to affix the same to any deed or other docu- … district or place.

… en the company and any … riod (if any) mentioned in … is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand,

on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Notes.—Besides its common seal, a company may under this section, obtain power to have an official seal for use abroad.—Palmer's *Company Law*, p. 259.

Disclosure of interest by director.

91A* (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement :

Provided that a general notice that a director is a member of any specified firm or company, and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this sub section and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees

[illegible] form shall [illegible] he must [illegible] not enter [illegible] a company are agents of a company and trustees for the shareholders of the powers committed to them *Buckley, 9th Ed. p.* 929 The a [illegible] company shall only be bound if two of [illegible] interests and act on its behalf. At a [illegible] present, one of the directors present was appointed as Managing Director and co-editor of the paper run by the company *Held*, that the appointment was not made with the authority of the company and was invalid, in as much as there was, in law and in fact only one director acting on behalf of the company, the other being incapacitated by his interest from acting in the particular matters that were discussed. *V. Rama Swami Iyer* v. *The Madras Times*, 32 Ind Cas. 350 = 33 M 991 A director's sub-partnership with other party to contract is interest in contract which should be disclosed. A. I. R. 1929 Mad 353 = 115 Ind. Cas. 486 Even mere relationship of the director as that of husband and wife or father and son, is interest, if the circumstances are such that it may reasonably be regarded as affecting the director's mind. *Ibid.*

Prohibition of voting by interested director.

91B.* (1) No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested; and if he does so vote, his vote shall not be counted :

Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.

"(3) This section shall not apply to a private company."†

Notes—There is almost invariably a more or less stringent clause as to the office of director being vacated if he is concerned in or participates in profits of contracts with the company, though such a clause has a saving to the effect that

* Section 91A to 91D have been inserted by Act 11 of 1914.
†. Sub-section (3) has been inserted by Act 42 of 1920.

it shall not apply if he discloses his interest, meaning the exact nature of the interest (*Imperial Mercantile Credit* v. *Coleman*, L. R. 6 H. L. 189), to his co-directors or if he is only interested as a member of another company, in which latter case he will have only to disclose the fact of his membership [*Costa* v. *Forwood*, (1901) 1 Ch. 746] The provision usually adds that he must not vote. Stiebel's *Company Law*, p 359. Under sub-section (2) any director who contravenes with the provisions of sub-section (1) shall be liable to a fine but non-observance will not forfeit his office as director. *Cf. Imperial Mercantile Credit* v. *Coleman*, (1871) 6 Ch. 558 In such a case his vote will not be counted. *British American Corporation*, (1903) 19 T. L. R. 662 ; see also 32 Ind. Cas. 205 ; 49 B. 491 ; (1916) I A. C. 554 But this section will not prevent a director from exercising his vote on such matters at a general meeting of the company. (1887) 12 A. C. 589 ; 40 Ch D. 135.

Provision—Usually a director is expressly allowed to vote on question of security to be given to him in respect of debts of the company for which he is liable Stiebel, p. 359

Disclosure to members in case of contract appointing a manager.

91C* (1) Where a company enters into a contract for the appointment of a manager of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall send an abstract of the terms of such contract or variation, as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member ; and the contract shall be open to the inspection of any member at the registered office of the company.

(2) If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine not exceeding one thousand rupees , and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Contracts by agents of company in which company is undisclosed principal.

91D* (1) Every manager or other agent of a company other than a private company who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it has been made.

(*a*) the contract shall, at the option of the company, be void as against the company ; and

(*b*) such manager or other agent shall be liable to a fine not exceeding two hundred rupees."

Prospectus.

Filing of prospectus.

92. (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

* Vide foot-note under section 91 A.

y prospecuts unless it is dated, and
by this section.

(4) Every prospectus ... face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and ... spectus, shall be li... date of the issue ...

Notes.—The object of this section would appear to be two fold. It ties a director to knowledge of the fact that the prospectus has been issued on a particular date, so that he cannot say he never heard of the prospectus or that certain misstatement

... tes laid down under s. 93. 152 Ind. Cas 763=A. I. R. 1934 Mad. 641=67 M. L. J. 487.

Specific requirements as to particulars of prospectus.

93. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state—

(*a*) the contents of the memorandum, with the names, descriptions and *addresses of the signatories and the number of shares subscribed for by them res*pectively; and the number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and the profits of the company; and

(*b*) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and

(*c*) the names, descriptions and addresses of the directors or proposed *directors and of the managers or proposed managers* (if any); and

(*d*) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount (if any) paid on the shares so allotted; and

(*e*) the number and amount of shares and debentures which within the *two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they* are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued, and

(*f*) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, *and the amount payable in* cash, shares or debentures to the vendor, and where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm, the ... , and ... oney in cash, shares ... the amount (if any) ... , as ... ing to procure subscriptions, for any shares in, or debentures of, the company, or the

rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-under-writers, and

(*i*) the amount or estimated amount of preliminary expenses; and

(*k*) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and

(*l*) the dates of, and parties to, every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus, and

(*m*) the names and addresses of the auditors (if any) of the company; and

(*n*) full particulars of the nature and the extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and

(*o*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

(2) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum, or the signatories thereto, and the number of shares subscribed for by them

(3) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons

(4) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors, or proposed directors and of managers or proposed managers, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Sub Clause (f)—The object clearly is to strip off the musk—as *Lord Davy* said—which often conceals the real vendor, and to get at the truth of who is the
of profit he or the suc-
ense of the company. But
and its operation is another.
the unscrupulous director
can easily comply with the letter, and yet, by a multiplicity of details, baffle inquiry and throw dust in the eyes of investors.—Palmer's *Company Law*, p. 346. An outsider cannot challenge the appointment of director or contest a director's authority to act on behalf of the company where the company has recognised a person to be a director for a long time, without repudiating his acts on any single occasion. 31 Ind Cas 595.

Clause (3)—A circular of which a few copies are printed or typewritten, and which is only given to the directors and few other persons for distribution among personal friends, does not come within this section. *Sleigh* v. *Glasgow*, (1904) 6 Fra. 420, *Sherwell* v. *Combined Incandescent Mantles*, (1907) 23 T. L. R. 482; (1911) 1 Ch. 573.

Clause (5)—No penalty is imposed for non-compliance with the section, and the inference seems to be that any one aggrieved by the neglect of the statutory

duty has a right of action for damages against the directors or promoters or other persons responsible for the neglect.—Palmer's *Company Law* citing *Atkinson* v. *Newcastle*, 1 Ex. D. 441 : *Cowley* v. *Newmarket*, (1892) A. C. 345 ; *Municipality* v. *Geldert*, (1893) A. C. 524 ; *Saunders* v. *Holborn*, (1895) 1 Q. B. 64 ; *Jhonston* v. *Consumers*, (1898) A. C. 447.

Meaning of "vendor" in section 93.

94. For the purposes of section 93 every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(*a*) the purchase-money is not fully paid at the date of issue of the prospectus ; or

(*b*) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus ; or

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

Notes.—Very wide meaning is given to the word "vendor"—Palmer's *Company Law*, p. 346.

Application of section 93 to the case of property taken on lease.

95. Where any of the property to be acquired by the company is to be taken on lease, section 93 shall apply as if the expression "vendor" included the lessor, and the expression "purchase-money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

Notes.—This corresponds to clause (3) of section 81 of the English Act

Invalidity of certain conditions as to waiver or notice.

96. Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirements of section 93, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void

Saving in certain cases of non-compliance with section 93.

97. In the event of non compliance with any of the requirements of section 93, a director or other person responsible for the prospectus shall not incur any liability by reason of the non compliance, if he proves that—

(*a*) as regards any matter not disclosed, he was not cognisant thereof ; or

(*b*) the non-compliance arose from an honest mistake of fact on his part :

in c [illegible]

shal [illegible]

he had knowledge of the matters not disclosed.

Obligations of companies where no prospectus is issued.

98. (1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Second Schedule.

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act or, in so far as it relates to the allotment of shares to a company limited by guarantee and not having a share capital.

Notes—The registrar will not file a statement in lieu of a prospectus unless every point in such form is dealt with either by a definite affirmative statement or

by a negative statement and he is bound in this case to see the statute is complied with.—Stiebel, p. 219. A scheme was set on foot to purchase a cotton mill as a going concern at an excessive price, and to promote a company greatly over-capitalised, to which it was to be sold at a profit to the promoters. One of the promoters introduced the scheme to the respondent Lewis, and induced him to provide £30,000 in cash, for

registered, but before the registration and at that time no prospectus, or statement in lieu of a prospectus had been filed as required by s. 82(1) (=this section) of the English Companies Act. *Held*, that the respondent was liable as a promoter. *Jubilee Cotton Mills* v. *Lewis*, (1924) A. C. 958 The statement is also open to inspection (1914) 1 Ch. 390. The requirements of the section are satisfied by the mere filing of the statement (1914) 1 Ch 390

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

99 A company shall not, at any time, vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the company in general meeting.

Notes—A company cannot previously to its statutory meeting alter the terms of a contract referred to in a prospectus or statement in lieu of a prospectus except subject to the approval of the statutory meeting. *Stiebel*, p. 330.

Liability for statements in prospectus.

100. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(a) with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement fairly represented the facts or was true ;

(b) with respect to every misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation : Provided that the director, person named as director, promoter or person who authorised the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it ; and

(c) with respect to every misleading or untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document :

he withdrew
without his

[illegible] consent ; or

s knowledge or consent, and
ave a reasonable public notice
; or

(*iii*) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where a company existing at the commencement of this Act has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any suit or legal proceedings brought against him in respect thereof.

(4) Every person who, by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section—

(*a*) the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or the portion thereof containing the misleading or untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;

(*b*) the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

Notes.—A prospectus set forth that the company had been formed for the purpose of acquiring a concession to work and sell rubber in a certain district, and *inter alia*, stated, "L. reports as follows," and then quoted the report L.'s name had been already mentioned as a director of the company The prospectus also stated that the statements in it were based mainly upon L.'s report and further stated that no portion of the price would be paid until the directors received an independent report substantially confirming L.'s
action to have his name tak[illegible]
in the report were untrue ar[illegible]
Held, that the averment was relevant *Mair v. Rio Grande Rubber Estates*, (1913) A. C. 853. Where a company issues a prospectus inviting applications for shares on the faith of a *bonafide* statement of fact expressly based on the *bonafide* report of an expert, the accuracy of those sta[illegible]
contract If the company does not intend [illegible]
itself from the report in such clear and [illegible]
applicants that it does not vouch for t[illegible]
based thereon Otherwise, if the report proves to be inaccurate, any material inaccuracy in the company's statements, though based thereon, will be a ground for recision. In such a case, calculations of future profits based on the date of the report may amount to a material misrepresentation of fact *In Re Pataya Rubber and Produce Co., Ltd.* (1914) 1 Ch. 542. Two of the directors mentioned in a prospectus retired before the allotment of shares and the fact of retirement was not communicated to the allottee of shares. *Held*, that the allottee of the shares would be entitled to rescind the contract of allotment of shares and claim a refund of the

moneys paid by him. A. I. R. 1930 Mad. 325=124 Ind. Cas. 193. A director is liable for the issue of a false prospectus even if he has not seen it. 152 Ind. Cas. 703=40 L. W. 519=1934 M. W. N. 1277=A. I. R. 1934 Mad. 641=67 M. L. J. 437.

Allotment.

Restriction as to allotment.

101. (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely :—

(*a*) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment ; or

(*b*) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription ;

has been subscribed, and the sum payable on application for the amount so fixed and named or for the whole amount offered for subscription, has been paid to and received in cash by the company

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of one hundred and twenty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of seven per cent. per annum from the expiration of the one hundred and thirtieth day : Provided that a director shall not be liable if he proves that the loss of the

shares to waive

[illegible]

(6) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say)—

(*a*) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment ; or

(*b*) if no amount is so fixed and named, the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash ;

has been subscribed and an amount not less than five per cent of the nominal amount of each share payable in cash has been paid to and received by the company.

(8) Sub section (7) shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act

Notes—This section applies to a company's first allotment of shares offered to the public subscription ; once the company has allotted shares offered for public subscription, it will not, if it makes a further issue have again to comply with the section ; nor does the section touch or affect in any way (except by sub-section 7) an allotment of shares not offered for public subscription, *e. g.* offered to a lim' circle of friends or relations. Palmer's *Company Law*, p. 108. The section ..

sub-section (3) requiring the amount payable on application to be not less than 5 per cent of the nominal amount of each share does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription. Stiebel, p. 223.

A person who has taken shares on the strength of an offer made before incorporation of the company can not avail himself of these provisions to avoid his contract. *Sherwell v Combined Incandescent Co*, (1907) 23 T. L. R. 482. Where the company has issued two prospectuses one of which does, and the other does not comply with these provisions, a person who has taken shares on the strength of the

then the issue of the shares as fully paid canot be justified. 51 C. L. J. 484=34 C. W. N 709=A. I. R. 1930 P. C. 151 ... 's must be made within reasonable time ... e after expiry of that time. 150 Ind Cas ... 1. 97. Allotment should not be made witl ... R. *1934 All 855 A director is guilty unde.*

102 (1) An allotment made by a company to an applicant in contravention of the provisions of section 101 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

Effect of irregular allotment.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 101 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby : Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment

One month.—It is not necessary that the actual proceeding should be commenced within the month—it is enough if notice of intention to avoid the allotment is given within the month—and proceedings are taken as soon as it is clear that the directors of the company do not intend to remove the applicant's name *National Motor Mail Coach Co.* (1908) 2 Ch. 228

Voidable.—After allotment the remedy under section 101 is gone and a company cannot avoid a wrongful allotment unless the allottee demands that they shall do so *Burton v. Bevan*, (1908) 2 Ch, 240.

Knowingly.—"Knowingly" signifies knowledge of facts and not of the law. Knowledge after allotment is not enough. *Burton v. Bevan*, (1908) 2 Ch. 240.

Compensation.—The amount of such compensation will probably not be limited to the amount by which the shares applied for fall short of the minimum subscription. *Daily Events Co, Times Newspaper, 2nd March*, 1911 cited in *Stiebel*, p. 224.

Invalid allotment.—*Vide* 1 Lah. L. J. 1.; 51 Ind. Cas 812 Secretaries can ... is no ... vbich ... the ... plica- ... the Board of Directors 1 Lah. L. J. 1.

103. (1) *A company shall not commence* any business or exercise any borrowing powers unless—

Restrictions on commencement of business.

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription ; and

(*b*) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash ; and

(*c*) there has been filed with the registrar a duly verified declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with ; and

(*d*) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement in lieu of prospectus.

(2) The registrar shall, on the filing of a duly verified declaration, in accordance with the provisions of this section certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled :

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares or, in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

Notes.—If a statement in lieu of prospectus has been filed pursuant to section 98 of the Companies Act, and the registrar has given a certificate under sub-section (2) the company can proceed to allotment notwithstanding that the statement contains mis-statements and omissions. *In re Blair Open Hearth Furnace Co. Ltd.* (1914) 1 Ch. 390.

Return as to allotments.

104. (1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter,—

(*a*) file with the registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share ; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which [illegible] file with the [illegible] acts and a [illegible], the extent [illegible] which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall, within one month after the allotment, file with the registrar the prescribed particulars of the contract stamped with the same stamp-duty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899*, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(3) If default is made in complying with the requirements of this section, every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues :

Provided that, in case of default in filing with the registrar within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Court may think proper.

Notes—In *British Farmer's Pure Linseed Cake Co.* (1878) 7 Ch. D. 533. *Jessel M. R.* said : "You are prohibited from contracting that shares shall be paid for otherwise than in cash except by a registered contract." The condition that the defendant need not pay unless the company makes a profit and dividend is paid is in direct violation of section 28 of the Companies Act of 1882. *Motilal* v. *Thakurlal*, 16 Ind. Cas. 696=36 B. 557. An arrangement that a registered company's purchased shares are not to be paid for in cash but are to be issued to the purchaser as [illegible] rtaken to [illegible] the Joint- [illegible] *Liquida-* [illegible] from the [illegible] nt in cash within the meaning of section 28 of Act if the debt be due *in praesenti*. *Ibid.* An allotment by the company under the deed of a fully paid-up share to a debenture- [illegible]

[illegible] the agreement was not invalidated due to its not being filed under this section. *Prem* v. *S. B. Ballimoria*, 48 A. 503=95 Ind. Cas. 570 The Directors and Manager of a company must furnish the return of allotment of shares required by s. 101 of the Companies Act. Ignorance of law is no excuse. 20 Cr L J. 725=52 Ind. Cas. 885. Duty payable on conveyance is not required to be levied on agreement for allotment of shares by company in future 137 Ind. Cas. 337=1932 A. L. J. 394=A. I R. 1932 All. 291 (S. B) ; see also A I. R 1934 Lah 530=36 P. L. R. 9=15 Lah. 501=150 Ind Cas. 781 ; 15 Lah. 509=150 Ind. Cas. 790=36 P. L. R. 143=A. I. R. 1934 Lah. 533 (S. B).

Clause (b)—The ratification of a previous contract by the board of directors of a company cannot be described as contract in writing constituting the title of the allottee. *Rama Swami* v. *Chungalraya*, 94 Ind. Cas. 892=(1926). M. W. N. 6.

Sub sections (2) and (3).—Where the registrar called for particulars under sub-section (2) and the same was not furnished and consequently the company was prosecuted under sub-section (3), *held*, that the prosecution was right. 94 Ind. Cas. 892.

* Act II of 1899.

Commissions and Discounts.

105. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles and the commission paid or agreed to be paid does not exceed the amount or rate so authorised and if the amount or rate per cent. of the commission paid or agreed to be paid is—

Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.

(*a*) in the case of shares offered to the public for subscription, disclosed in the prospectus ; or

(*b*) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar and, where a circular or notice, not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase-money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Clause (1).—This clause makes provision for underwriting agreement. An underwriter generally finds subscribers for so many of the shares specified in the underwriting letter, as are not before a certain date or event, otherwise subscribed. *See Gorrissen's Case*, 8 Ch. 1570. In return of his services he is given certain commission. 42 Ch. D 1 ; 13 T L. R 569 ; (1897) 1 Ch. 575 Before the passing of this Act, it was doubtful whether such commission could be paid. *Vide Lord Davy* in *Hilder* v. *Dexter*, (1902) A. C. 474 (478) ; *Sydney* v. *Bird*, 33 Ch D. 85, 95 ; *Foure Electric Accumulator Co.*, (1886) 40 Ch D. 141. Contract by the contractor of a Company to take shares after payment of allotment money and after agreement to pay the balance by goods supplied does not contravene the provision, of this section. 63 M. L. J. 859=54 A. 827=60 I. A. 1=35 Bom. L. R. 312=37 C. W. N. 373=57 C. L. J. 157=A. I. R. (1932) P. C. 240.

Clause (2)—When the provision is in contravention of Indian Companies Act s. 105 (2) it is *ultra vires*, 115 Ind. Cas. 748.

106. Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed or so much thereof as has not been written off, shall be stated in every balance-sheet of the company until the whole amount thereof has been written off.

Statement in balance-sheet as to commissions and discounts.

Notes—This section only applies to the underwriting of shares, and not of debentures, as there was never any legal objection to the underwriting of debentures, but sums paid for underwriting of shares or debentures, or allowed by way of discount in respect of debentures, or so much thereof as has not been written off, must be stated in every balance-sheet of the company, until the whole amount has been written off—*Stiebel* p. 181.

Payment of Interest out of Capital.

Power of company to pay interest out of capital in certain cases.

107. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

(1) no such payment shall be made unless the same is authorised by the articles or by special resolution;

(2) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Local Government, which sanction shall be conclusive evidence for the purposes of this section that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section,

(3) before sanctioning any such payment, the Local Government may, at the expense of the company, appoint a person to inquire and report to such Local Government as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;

(4) the payment shall be made only for such period as may be determined by the Local Government; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided;

(5) the rate of interest shall in no case exceed four per cent. per annum or such lower rate as the Governor General in Council may, by notification in the *Gazette of India*, prescribe;

(6) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;

(7) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate;

(8) nothing in this section shall affect any company to which the Indian Railway Companies Act, 1895,* or the Indian Tramways Act, 1902,† applies.

N. B.—The power, it will be observed, is carefully hedged now with conditions designed to prevent any abuse.—*Palmer's Company Law*, p. 22.

Certificates of Shares, etc.

Limitation of time for issue of certificates.

108. (1) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or

* Act X of 1895 † Act IV of 1902.

transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Notes—"The certificates in companies of this kind, are the proper, and indeed the only documentary evidence of title in the possession of a share-holder" *Per Lord Shelborne* in *Societe Generale de Paris* v. *Walker*, 11 App. Cas. 20, 29 : see also 3 Q. B. 595 ; 7 H. L. Cas at p. 509 ; 3 App. Cas 1004.

Information as to Mortgages, Charges, etc.

Certain mortgages and charges to be void if not registered.

109. Every mortgage or charge created after the commencement of this Act by a company and being either—

(*a*) a mortgage or charge for the purpose of securing any issue of debentures ; or

(*b*) a mortgage or charge on uncalled share capital of the company ; or

(*c*) a mortgage or charge on any immovable property wherever situate, or any interest therein ; or

(*d*) a mortgage or charge on any book debts of the company ; or

(*e*) a floating charge on the undertaking or property of the company ;

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner are filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable :

Provided that—

(*i*) in the case of a mortgage or charge created out of British India, comprising solely property situate outside British India, twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be filed with the registrar ; and

(*ii*) where the mortgage or charge is created in British India but comprises property outside British India, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate , and

(*iii*) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of [illegible]

[illegible] im-

[illegible] y.

[illegible] the borrowing powers of the [illegible] is to be exercised and it does [illegible] where such sale falls within [illegible] *...gh* v. *The Mafassal Bank Ltd.*

L. R. 6 A. 29=83 Ind. Cas. 142=A. I. R. (1925) All. 206 (2). This section applies to a mortgage or charge created by the company by contract and not to a charge arising by operation of law (1927) Oudh 55 ; see also A. I. R. 1934 All. 161=(1934) A. L. J. 195.

Clause (1).—A mortgage will be created for the purposes of this section where property purchased by a company and paid for out of its own moneys is subsequently conveyed to the trustees of an existing covering deed on their repaying such money to the company. *Cornbrook* v. *Law*, (1904) 1 Ch. 103 ; but not where there is a conveyance direct from the vendor to the trustees. *Bristol United Breweries* v. *Abbott*, (1908) 1 Ch 279 cited in *Stiebel*, p. 535. The date of creation of a charge is the date when the seal of the company is affixed to the debentures. *Spiral Globe*, (1902) 2 Ch 209 ; *New London and Suburban, Omnibus*, (1908) 1 Ch. 621 ; but see *Abrahams and Sons Ltd*, (1902) 1 Ch. 695 ; *Harrogate States Ltd.*, (1903) 1 Ch. 498 ; *N. Defries & Co.* (1904) 1 Ch. 37. A mortgage or charge is "created" when the deed or agreement is executed or entered into, even though the advance is made subsequently (1902) 2 Ch. 209 ; (1903) 1 Ch. 498 ; (1908) 1 Ch. 621 ; see also 38 C. W. N. 1190 ; 35 C. W. N. 1034 (P. C).

Clause (d)—Book-debts are debts which are entered or commonly entered in books. *Shipley* v *Marshall*, 14 C B N. S. 566 ; *Tailby* v. *Official Receiver*, 13 App. Cas. 523 , *Dawson* v. *Isle*, (1906) 1 Ch 633 ; *Law Car etc Corporation*, W. N. (1911) 9, cited in Palmer's *Company Law*, p 281. Assignment of book-debt by company as security for securing existing debt is mortgage of that debt. Unless it is registered, it is inoperative as against liquidator and creditors of company. A. I. R 1935 Cal. 218.

Where the director of a company pledged the movable assets of the company but remained himself in possession as agent of the pledgee, *held*, that only a floating charge was created and it not being registered as required by this section was void against the liquidator. *Padamjee & Co.* v. *N. K Moos*, 27 Bom. L. R. 1218=91 Ind. Cas 334 It is necessary to file with the registrar the particulars of a mortgage by deposit of title deeds, whether or not it is accompanied by a memorandum of deposit. A. I. R. (1927). Bom. 167 A mortgage registered within 21 days has priority over a prior mortgage registered subsequently under an order of extension by High Court. (1927) Oudh 300.

A floating security is not a specific mortgage of assets, *plus* a licence to the mortgagor to dispose of them in the course of his business, but is a floating mortgage applying to every item comprised in the security, but not specifically affecting any item until some event occurs or some act on the part of the mortgagee is done which causes it to crystallize into a fixed security. (1910) 2 K. B. 979 ; (1927) A. I. R. Cal 682.

[illegible] ar as [illegible] Ind. [illegible] diate [illegible] Cas. [illegible] not [illegible] property merely because it takes effect over [illegible] that such debentures constitute a charge on immovable property of the company issuing them. 127 Ind. Cas. 760. The debentures charging the company's assets though not creating an interest in immovable property create a floating charge and require registration under s. 17 (1) of the Registration Act. 58 C 136=53 C. L. J. 269=131 Ind. Cas. 689=A. I. R. 1931, Cal. 223 ; but see 35 C. W N 1034=A I R. 1931 P. C. 245. Mortgage or charge created by company on immovable property is not necessarily interest in immovable property. Debentures charging company's assets, present and future, must be registered under Registration Act s. 17. 131 Ind. Cas. 689=53 C. L. J. 269=58 C. 136=34 C. W. N. 605=A. I. R (1931) Cal. 223.

110. [illegible] to [illegible] of [illegible] en-titled *pari passu* is created by a company, it shall be sufficient for the purposes of section 109 if there are filed with the registrar within twenty-one days after the execution of the

Particulars of debentures entitling holders pari passu.

deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

(a) the total amount secured by the whole series ; and

(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined ; and

(c) a general description of the property charged ; and

(d) the names of the trustees (if any) for the debenture-holders ;

together with the deed or a copy thereof verified in the prescribed manner containing the charge, or if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

Debentures.—"I cannot find" said *Chitty J.* in *Levey* v. *Abercorris Co.* (1888) 37 Ch. D. 264, "any precise legal definition of the term (*i. e.* debenture) It is not either in law or commerce a strictly technical term, or what is called a term of art. It is very wide term, but it is now generally used to signify a security for money called on the face of it a debenture, and providing for the payment of a specified sum—say £100—at a fixed date, with the interest meantime half-yearly. It usually gives a charge by way of security, and in most cases is expressed to be one of the series of like debentures. But the term as used in common parlance is of an extremely elastic character." Palmer's *Company's Law* citing *Gardiner* v. *London*, 2 Ch. 201 ; *Levey* v. *Abercorris Co* 37 Ch. D 264 ; *Robson* v. *Smiths*, (1895) 2 Ch. 118 ; *British India and Co.* v. *Commissioner*, 7 Q. B. D. 165.

Particulars in case of commission, etc., on debentures

111. Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 109 and 110 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

Notes.—The legality of issuing a debenture at a discount is recognised by this section *Buckley*, p 249.

Register of mortgages and charges.

112. (1) The registrar shall keep, with respect to each company, a register in the prescribed form of all mortgages and charges created by the company after the commencement of this Act and requiring registration under section 109, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(2) After making the entry required by sub-section (1), the registrar shall return the instrument (if any) or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 109 or section 110 to the person filing the same.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection.

Clause (3).—The right of inspection includes the right to take copies. (1897) 1 Ch. 130.

Index to register of mortgages and charges.

113. The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Notes.—This section makes provision for the keeping of a chronological index in the prescribed form and with the prescribed particulars of the mortgages or charges registered with the registrar under the Act.

Certificate of registration.

114. The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 109, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 109 to 112 as to registration have been complied with.

Notes.—The certificate is *conclusive evidence* that the requirements of the section as to registration have been complied with. The mistake on the part of the registrar does not invalidate the certificate *Yolland, Husson, Birkett and Co. Ltd* (1908) 1 Ch. 152; see also *Cunard Steamship Co.* v. *Hopwood*, (1908) 2 Ch. 564; *Harrogate Estates, Ltd*, (1903) 1 Ch. 498; (1924) 1 K. B 431 at p. 444.

Endorsement of certificate of registration on debenture or certificate of debenture stock.

115. The company shall cause a copy of every certificate of registration, given under section 114, to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered:

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of *registration* of any mortgage or charge so given to be endorsed on any debenture or *certificate* of debenture stock which has been issued by the company before the mortgage or charge was created.

Duty of company and right of interested party as regards registration.

116. (1) It shall be the duty of the company to file with the registrar for registration the prescribed particulars of every mortgage or charge created by the company *and* of the ... , requiring any such mortgage or charge n... istration of ... any person interested therein.

(2) Where the registration is effected on the application of some person other than the company, that *person shall* be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

Copy of instrument creating mortgage or charge to be kept at registered office.

117. Every company shall cause a copy of every *instrument* creating any mortgage or charge requiring *registration* under section 109, to be kept at the registered office of the company: Provided *that*, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

Registration of appointment of receiver.

118 (1) If any person obtains an order for the appointment of a receiver of the property of a company, or *appoints such a* receiver under any powers contained in any *instrument*, he shall, within fifteen days from the date of the order or of the appointment under the *powers* contained in the instrument, file notice of the fact with the registrar, and the registrar shall, on payment of the prescribed fee, enter the fact in the *register* of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Filing of accounts of receivers.

119. (1) Every receiver of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall once in every half-year while he remains in possession, and also on ceasing to act as receiver, file with the registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also, on ceasing to act as receiver, file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges

(2) Every receiver who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five hundred rupees.

Rectification of register of mortgages.

120. The Court, on being satisfied that the omission to register a mortgage or charge within the time required by section 109, or that the omission or mis-statement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant a relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or mis statement be rectified, and may make such order as to the costs of the application as it thinks fit.

... d on the ground of *bona fide* belief that regis... *& Co Ltd*, (1901) W. N. 152. In *Bootle* ... application was granted on the ground of ... ay of stamp authorities In *Joplin Breweries*, (1902) 1 Ch. 79 an application was granted on the ground that delay had been caused by the illness of a director. Similar application may be granted on the ground of misunderstanding of law. *Mendip Press*, (1901) T. L. R. 38; (1905) 49 Sol J 283 cited in Stiebel, p 350.

... priority. 122 Ind Cas. 163= ... of company in whose favour ... ny has been granted cannot ... though he has ceased to be ... enforced 56 Ind Cas 163= ... ers of the company for their ... has already crystalized and ... as required by s. 68. 32 Ind. Cas. 91.

Entry of satisfaction.

121. The registrar may, on evidence being given to his satisfaction that the date for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof.

Penalties.

122. (1) If any company makes default in filing with the registrar for registration the particulars—

(*a*) of any mortgage or charge created by the company; or

(*b*) of the issues of debentures of a series,

requiring registration with the registrar ... Act, then, unless the registration has bee[n] ... other person, the company, and every o[fficer] ... who is knowingly a party to the default, shall on conviction be liable to a fine

not exceeding five hundred rupees for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company, and every officer of the company, who knowingly and wilfully authorises or permits the default shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

Notes.—*Vide* 29 M. L. J. 110.

Company's register of mortgages.

123. (1) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

Notes.—Non-registration does not affect the validity of a charge. In cases of wilful omission, a penalty not exceeding five hundred rupees is to be imposed. *Re General South America Co*, 2 Ch. D. 337; *Wright* v. *Harton*, (1887) 12 App. Cas. 371; 43 M. 550 (P. C).

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

124. (1) The copies kept at the registered office of the company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the registrar, and the register of mortgages kept in pursuance of section 123, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding fifty rupees and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of

shall incur the like

y by order compel

Notes.—A prospective creditor can see the company's register of mortgages but not the mortgages or charges. *National Union Bank of England* v. *Cornby*, (1928) W. N. 315.

Right to inspect the register of debenture-holders and to have copies of trust-deed.

125. (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspec-

tion, and every such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(2) A copy of any trust-deed for securing any issue of debenture shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust-deed of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and the Court may by order compel an immediate inspection of the register.

... ion cannot himself take copies. *Balaghat* ... ure stock very rarely contains any charge ... secure by a trust-deed. Debentures al- ... infrequently accompanied by a trust-deed, ... e benefit of a fixed charge on certain of the property of the company. Stiebel, p 477. A fixed charge may b made to rank after a floating charge. *Robert Stephenson and Co.*, (1902) 133 L. T. J. 135.

Debentures and Floating Charges.

126. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

Perpetual debentures.

Notes.—Where, however, the covenant for repayments provides that the principal money shall be repayable on the happening of events which may not happen for an indefinite period. [*Per Rigby, L. J* in *City of London Brewery* v. *Inland Revenue*, (1899) 1 Q B. 121, 138], or where the debenture or debenture stock is stated to be irredeemable, and there is no provision for redemption or covenant for repayment, there the debenture stock and debentures will be what is called perpetual or irre- ... ithin the ... (1905) ... bt as to ... as it was ... ption of ... C. 323. ... (1931) 2 Ch. 147 at p. 151.

127. (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

Power to re-issue redeemed debentures in certain cases.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have, either before or after the commencement of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) Nothing in this section shall prejudice—

(*a*) the operation of any decree or order of a Court of competent jurisdiction pronounced or made before the twenty-fifth day of February, 1910, as between the parties to the proceedings in which the decree or order was made, and any appeal from any such decree or order shall be decided as if this Act had not been passed, or

(*b*) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

Notes.—With regard to debentures which a company has redeemed or brought on the market formerly the law was that such debentures were cancelled or spent by the fact that the money secured by them was paid off, and they could not be re-issued. The same rule was applicable where debentures were purchased and registered in the name of the company. *George Routledge*, (1904) 2 Ch. 474. This law was altered in England by section 15 of the Companies Act, 1907. That change has also been incorporated in section 104 of the Companies Consolidation Act, 1908 and in this section. Upon any such re-issue the person entitled to the debentures will have, and is deemed always to have the same rights and priorities as if the debentures had not been previously issued. The question whether re-issued debentures requires registration was raised in *New London and Suburban Omnibus Co.* (1908) 1 Ch 621, where *Neville J*, did not decide the question, but held in that particular case that debentures did not require registration Stiebel, p. 470.

Specific performance of contract to subscribe for debentures.

128. A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

Notes.—The enactment of this section alters the law as laid down in *South African Territories v Wallington*, (1898) A. C. 309 ; see also (1915) 1 Ch 472 at p 476. Before the enactment of this section it was a mere agreement and could not be enforced specifically. *Ibid.*

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

129. (1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being

wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Notes—*Vide* (1898) 2 Ch 378 at p. 381.

Statements, Books and Accounts

Company to keep proper books of account.

130. Every company shall keep proper books of account in which shall be entered full, true and complete accounts of the affairs and transactions of the company.

Annual balance sheet.

131. (1) Every company shall, once at least in every year and at intervals of not more than fifteen months, cause the accounts of the company to be balanced and a balance-sheet to be prepared

(2) The balance-sheet shall be audited by the auditor of the company as hereinafter provided, and the auditor's report shall be attached thereto, or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(3) Every company other than a private company shall send a copy of such balance sheet so audited to the registered address of every member of the company at least seven days before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the members of the company during a period of at least seven days before that meeting.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one thousand rupees, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Balance sheet—'In order to ascertain the profits earned and divisible at any given time the balance-sheet must contain a fair statement of the liabilities of the company, including its paid-up capital and on the other hand a fair or more properly a *bonafide* valuation of
Per Lord Sand in *Cit*
plaint under section 74
filing its balance-sheet,
countersigned by the Public Prosecutor, is bad in law and not entertainable by a Criminal Court. 8 Ind. Cas 191=35 P. W R. 1910 Cr.; see also 18 Ind. Cas 965=35 A. 173; 15 Cr. L. J 260 Auditors signing auditors' report below false balance-sheet make false statement and are liable under s 282. 134 Ind Cas 993=25 S L. R. 297 =A. I R. 1932 Sind 4

Contents of balance-sheet.

132. (1) The balance-sheet shall contain a summary of the property and assets and of the capital and liabilities of the company giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at

(2) The balance sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit.

Notes—Mistakes and omissions in the classification of debts as 'doubtful' or 'bad' can not, in the absence of positive evidence of guilty knowledge, be taken to

part of the directors of a limited company.
their debts as a separate item afford any
d omissions, though by themselves would
e directors, will not make them criminally
ppen to be a trained accountant certifies
to the existence of securities and states that the balance-sheet is correct and according to law, he can not be held liable criminally for failure to detect mistakes which would have revealed financial unsoundness of the company. 8 Ind. Cas. 326 ; see also 22 Ind. Cas 432 (F. B). If any part of a secret reserve is availed of to meet bad and doubtful book-debts, it must be revealed in the balance-sheet and not concealed. (1927) A. I. R. Bom. 414 ; 134 Ind. Cas. 993=25 S. L R. 297. Where there is sufficient provision against bad debts, interest on bad debts can be carried to profit and loss account. 140 Ind. Cas 31=26 S. L. R. 211=33 Cr. L. J. 891=1933 Cr. C. 36=A. I. R. 1933 Sind 12. Where balance-sheet is not due, accused can not be charged for not filing it. 138 Ind. Cas. 317=33 Cr. L. J. 589=A. I. R. 1932 Mad. 497.

Authentication of balance-sheet.

133. (1) Save as provided by sub section (2) the balance-sheet shall—

(i) In the case of a banking company, be signed by the manager (if any) and, where there are more than three directors of the company, by at least three of those directors and, where there are not more than three directors, by all the directors ;

(ii) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole director and by the manager (if any) of the company.

(2) When the total number of directors of the company for the time being in British India is less
by sub section (1),
the time being in Br
in British India, by such director, but in such a case there shall be subjoined to the blance-sheet a statement signed by such directors or director explaining the reason for non compliance with the provisions of sub section (1).

(3) If any copy of a balance-sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is knowingly a party to the default shall be punishable with fine which may extend to five hundred rupees.

Notes—The directors sign on behalf of the company and after approval by the board by a resolution.

Copy of balance-sheet to be forwarded to the registrar.

134. (1) After the balance-sheet has been laid before the company at the general meeting a copy thereof signed by the manager or secretary of the company shall be filed with the registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of section 32.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet, a statemant of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the copy thereof required to be filed with the registrar.

(3) This section shall not apply to a private company.

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty as is provided by section 32 for a default in complying with the provisions of that section.

Notes.—In answer to a charge under clause (4) in respect of default made in filing with the registrar the balance-sheet for a certain year, it is not open to a director of a joint-stock company to plead that as no general meeting was called in

that year and no balance-sheet was laid before the company at any such general meeting, it was impossible for him or his company to comply with the requirements of this section. The Presidency Magistrates in Calcutta possess jurisdiction to try charges under section 134 of the Indian Companies Act even where the company is situate outside Calcutta, as the office of the registrar with whom the balance-sheet should be filed is in Calcutta *Debendra* v. *Regist*
22 C. W. N. 96=27 C L. J. 85 A company is r
sheet till a year from its registration is complete,
resigns office before the expiry of the year c
section 74 of the Companies Act (VI of 1882) for failure to file a balance-sheet with the registrar of joint-stock companies. *Chander Bhan* v *Emperor*, 13 Ind. Cas. 748=15 Cr L. J 380. An order directing the directors individually to pay fine imposed on the company is illegal. *Dwarka* v. *Emperor*, 6 L. L. J. 160=1924 Lah 489 The penalty laid down under section 74 of the Indian Companies Act of 1882 is a fixed penalty and the magistrate, trying a case under that section, is not competent to inflict a lesser penalty. *Dino Nath* v. *King Emperor*, 11 A. L J. 196=18 Ind. Cas 665=14 Cr L J. 105=36 A 173, *Crown* v. *Lala Harkishan Lal*, 37 P. L. R. 1914=23 Ind. Cas. 468=19 P. R. 1914; *Tota Ram* v. *Crown*, 18 P. R. 1916 Cr =35 Ind. Cas. 482. Unless the registrar is authorised to empower a person to institute complaints under this section, no other person can institute complaints under this section. *Tola Ram* v. *Crown*, 34 Ind. Cas. 392=14 P. R. 1916 C. R. An offence under this section is a criminal offence. *Reg.* v. *Tyler*, (1891) 2 Q. B. 588. The fact that the directors have committed an offence by not summoning a meeting —so that they cannot make a list of the members so as to comply with the section —will be no answer, and they can be convicted of both offences. *Park* v. *Lawton*, (1911) 1 K B 558.

Right of member of company to copies of the balance-sheet and the auditor's report.

135. Save as otherwise provided in this Act, any member of a company shall be entitled to be furnished with copies of the balance sheet and the auditor's report at a charge not exceeding six annas for every hundred words or fractional part thereof.

Notes.—The shareholders cannot be deprived of their statutory rights given under this section.

Statement to be published by Banking and certain other Companies.

Certain companies to publish statement in schedule.

136. (1) Every company being a limited banking company or an insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked G in the Third Schedule, or as near thereto as circumstances will admit.

(2) A copy of the statement shall be displayed and, until the display of the next following statement, kept displayed in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on

(3) Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding eight annas.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Indian Life Assurance Companies Act, 1912,* or of the Provident Insurance Societies Act, 1912,† as the case may be, as to the annual statements to be made by such company or society, apply

* VI of 1912. † V of 1912.

with or without modifications, if the company or society complies with those provisions.

Notes.—Under sub-section (1) every limited banking company is bound to publish a statement provided in the third schedule on the date specified in the section and the failure to comply with its provisions is punishable under sub-section (4). The fact that statements could not be published in time on account of the change in the closing date of the financial year of the company is not a valid answer to the charge. *Parshu Ram v. Sham Dasini, In re.* 48 B. 305=26 Bom. L. R. 68=82 Ind. Cas. 58 (2)=1924 Bom. 308.

Investigation by the Registrar.

Power of registrar to call for information or explanation.

137. (1) Where the registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order.

(2) On the receipt of an order under sub-section (1), it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

(3) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty repees in respect of each offence.

(4) On receipt of such information or explanation the registrar may annex the same to the original document submitted to him; and any additional document so annexed by the registrar shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject.

(5) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the registrar shall report in writing the circumstances of the case to the Local Government.

Inspection and Audit

Investigation of affairs of company by inspectors.

138. The Local Government may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Local Government may direct—

(*i*) in the case of a banking company having a share capital, on the application of members holding not less than one-fifth of the shares issued;

(*ii*) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

(*iii*) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members;

(*iv*) in the case of any company, on a report by the registrar under section 137, sub-section (5).

139. An application by members of a company under section 138 shall be

Security for payment of the costs of the inquiry.

Notes.—Where an application is made under these provisions the Local Government always requires a statutory declaration . . reason for and are not actuated by malicious The applicants are also required to make a d . . . . the investigation is likely to cost. Stiebel, p. 405

140. (1) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

Inspection of books and examination of officers.

(2) An inspector may examine on oath any such person in relation to its business, and may administer an oath accordingly.

(3) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty rupees in respect of each offence

141. (1) On the conclusion of the investigation, the inspectors shall report their opinion to the Local Government and a copy of the report shall be forwarded by the Local Government to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

Results of examination how dealt with.

(2) The report shall be written or printed, as the Local Government directs.

(3) All expenses of, and incidental to, the investigation shall be defrayed by the applicants unless the Local Government directs the same to be paid by the company, which the Local Government is hereby authorized to do.

Power of company to appoint inspectors.

142. (1) A Company may by a special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shal have the same powers and duties as inspectors appointed by the Local Government, except that, instead of reporting to the Local Government, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) All persons who are or have been officers of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Local Government.

143. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Report of inspectors to be evidence.

144. (1) No person shall be appointed or act as an auditor of any company other than a private company unless he holds a certificate from the "Governor General in Council",* entitling him to act as an auditor of companies:

Qualifications and appointment of auditors.

†"Provided that a firm whereof [all the partners practising in India]† hold such certificates may be appointed by its firm name to be auditor of a company, and may act in its firm name."

(2) "The Governor General in Council . . *zette of India* and after previous publication, . renewal or cancellation of such certificat. . . . . . . restrictions for such grant, renewal or cancellation:

* Substituted by Act XIX of 1930. † Substituted by Act I of 1932.

[illegible] in such rules shall preclude any person [illegible] ely by reason that he does not practise as a [illegible]

*"(2A) In particular, and without prejudice to the generality of the foregoing power, such rules may—

"(*a*) provide for the maintenance of a register of accountants entitled to apply for such certificates ;

"(*b*) prescribe the qualifications for enrolment on the register and the fees therefor ;

"(*c*) provide for the examination of candidates for enrolment, and prescribe the fees to be paid by examinees ;

"(*d*) prescribe the circumstances in which the name of any person may be removed from or restored to the registrar ;

"(*e*) provide for the establishment, constitution and procedure of an Indian Accountancy Board, consisting of persons representing the interests principally affected or having special knowledge of accountancy in India, to advise him on all matters of administration relating to accountancy and to assist him in maintaining the standards of qualification and conduct of persons enrolled on the Register ; and

"(*f*) provide for the establishment, constitution and procedure of local accountancy boards at such centres as the Governor General in Council may select, to advise him and the Indian Accountancy Board on any matter that may be referred to them

"(2) [illegible]
to be [illegible]

(3) [illegible] or auditors to hold office until the next annual general meeting.

(4) If an appointment of an auditor is not made at an annual general meeting, the Local Government may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(5) The following persons, that is to say,

(*i*) a director or officer of the company ; and

(*ii*) a partner of such director or officer ; and

(*iii*) in the case of a company, other than a private company, any person in the employment of such director or officer,

shall not be appointed auditors of the company.

(6) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general [illegible] a copy of any such notice to the retiring [illegible] to its members either by advertisement or [illegible] ticles not less than seven days before the annual general meeting :

Provided that, if after notice of the intention to nominate an auditor has [illegible] the notice to be sent or given by the company may, instead of being sent or given within the time required by this section, be sent or given at the same time as the notice of the annual general meeting.

(7) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the mem-

* Added by Act XIX of 1930.

bers of the company in general meeting, in which case such members at that meeting may appoint auditors.

(8) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.

(9) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

a company appointed certain
balance-sheet as auditors and
tors' report issued to the shareholders But it was subseqently discovered that their appointment was irregular in as much as the general meeting in which they were appointed was without proper quorum ; *Held*, in a proceeding against the auditors under section 214 for misfeasance as auditors, that they were not only *de facto* auditors and also *de jure* auditors and that no *irregularity in their appointment could avail them. Stuart Smith* v. *Official Liquidator*, 24 Ind. Cas. 431 ; see also In *re Western Counties Steam Berkies*, (1897) 1 Ch. D. 617. Where three of the directors who could appoint to a casual vacancy voted as shareholders in the general meeting which appointed the auditors, they could be said to have made the appointment as directors. *24 Ind. Cas. 431.*

Powers and duties of auditors.

145. (1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the members of the company on the accounts examined by them, and on every balance sheet laid before the company *in general meeting during their tenure of office, and the report shall state :—*

(*a*) whether or not they have obtained all the information and explanations they have required ; and

(*b*) whether, in their opinion, the balance-sheet referred to in the report is drawn up in conformity with the law ; and

(*c*) whether such balance-sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) In the case of a banking company, if the company has branch banks beyond the limits of India, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in British India.

the above case at p 284, *Lindley L. J* said "Auditors are, in my opinion, bound to see what exceptional duties, if any.
pany whose accounts they are called
exceptional duties imposed by then

under the Companies Acts for the time
eets do not show the true financial con-
occasioned, the onus is on the auditors
any breach of duty on their part. Auditors are *prima facie* responsible for *ultra vires* payments made on the faith of their balance-sheet, but whether and to what extent they are responsible for not discovering and calling attention to the illegality of payments made prior to the audit must

1 Ch. 139 Where an auditor
calling for information and
Bank Allahabad Ltd, In *re*
=88 Ind. Cas. 785. But "it is no part of an
London and General Bank, (1895) 2 Ch.
shareholders as to what they ought to
do. An auditor has nothing to do with the prudence or imprudence of making bonus
with or without secu
being conducted pru
to him whether divi
his own duty to th
financial position of the company at the time of the audit, and his duty is confined to that. But then comes the question; how is he to ascertain that position? The answer is: By examining the books of the company. But he does not discharge his duty by doing this without enquiry and without taking any trouble to see that the books themselves show the company's true position. He must take reasonable care to ascertain that they do so. Unless he does this, his audit will be worse than idle farce. Assuming the books to be so kept as to show the true position of a company, the auditor has to frame a balance-sheet showing that position according to the *books, and to certify* that the *balance-sheet presented is correct in that sense.* But his first duty is to examine the books not merely for the purpose of ascertaining what they do show, but also for the purpose of
true financial position of the company. This is
of *Sterling J. in Leeds Estate Building and I.*
787. An auditor, however, is not bound to d
and skill in making enquiries and investigations He is not an insurer, he does not guarantee that the books do correctly show the true position of the company's affairs; he does not even guarantee that h
of the company. If he did, he
if he were himself deceived withou
the fraudulent concealment of a b
this. Such I take to be the duty of the auditor; he must be honest—*i.e.*, he must not certify what he does not believe to be true, and he must take reasonable care and *skill before he believes that what he certifies is true What is reasonable care in any* particular case must depend upon the circumstances of that case. Where there is nothing to excite suspicion, very little enquiry will be reasonably sufficient, and, in practice, I believe, business men select a few cases at haphazard, see that they are right, and assume that others like them are correct also. Where suspicion is aroused, more care is obviously necessary"

Rights of preference shareholders, etc., as to receipts and inspection of reports, etc.

146. (1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance-sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company, nor to a company registered before the commencement of this Act.

Notes.—This section provided that holders of preference shares of a company shall have the same right to receive and inspect the balance-sheets of a company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

Carrying on business with less than the legal minimum of members.

Liability for carrying on business with fewer than seven or, in the case of a private company, two members.

147. If at any time the number of members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of

the company contracted during that time, and may be sued for the same without joinder in the suit of any other member.

Notes.—For the purpose of this section representatives of members, *e g.*, executors or administrators or trustees in bankruptcy are not members *Bowling and Welby's Contract*, (1895) 1 Ch. 663.

Service and Authentication of Documents

Service of documents on company.

148. A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

Notes.—Order XXIX, Rule 2, of the Civil Procedure Code preserves the provisions of this section as regards service of process on companies registered under the Act. *Hope Mills* v *Vithal Das*, 12 Bom L. R. 730=7 Ind Cas 982 A company registered in Scotland or Ireland can not be served in England even when it carries on business there 23 Q B. D 285.

Service of documents on registrar.

149. A document may be served on the registrar by sending it to him by post, or delivering it to him, or by leaving it for him at his office.

Authentication of documents.

150. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

Notes.—A secretary if duly authorised by authenticated document under this section may sign. Stiebel p 375.

Tables, Forms and Rules as to prescribed matters.

Application and alteration of tables and forms, and power to make rules as to prescribed matters

151. (1) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The Governor General in Council may alter any of the tables and forms in the First Schedule, so that he does not increase the amount of fees payable to the registrar in the said Schedule, mentioned, and may alter or add to the forms in the Third Schedule.

(3) Any such table or form, when altered, shall be published in the *Gazette of India*, and on such publication shall have effect as if enacted in this Act but no alteration made by the Governor General in Council in Table A in the First Schedule shall affect any company registered before the alteration, or repeal; as respects that company, any portion of that table

(4) In addition to the powers hereinbefore conferred by this section, the Governor General in Council may make rules providing for all or any matters which by this Act are to be prescribed by his authority.

(5) Every such rule shall be published in the *Gazette of India*, and on such publication shall have effect as if enacted in this Act.

e third schedule should be generally
The Governor General may alter this
of fees payable to the registrar. For
, 1914 pt. I p 805.

Arbitration and Compromise.

Power for companies to refer matters to arbitration.

152. (1) A company may by written agreement refer to arbitration, in accordance with the Indian Arbitration Act, 1899,* an existing or future difference between itself and any other company or person.

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* IX of 1899.

(2) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(3) The provisions of the Indian Arbitration Act, 1899,* other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations between companies and persons in pursuance of this Act.

Notes—Section 152 is merely an enabling section. A.I.R. 1931 Lah. 555=32. P. L R. 444=132 Ind Cas. 399. *Arbitration under s. 152 are not restricted by Arbitration*
Act, s =A. I R. 1933 Pat. 49. Arbitration Act
(1899). arbitrations under Companies Act. 141
Ind. Ca =A. I. R. 1933 Lah. 44; see also 143
Ind. Ca Ind. Cas. 180=A. I. R. 1933 Lah. 46.
A conti ute which might arise between a com-
pany a is not under the seal of the company.
The Ganges Sugar Works v. *Nuri Miah*, 28 Ind Cas 385=37 A. 273=13 A. L. J. 312. Powers of a living company to refer to arbitration are not co-extensive with the powers of official liquidators who can not refer dispute to private arbitration. 50 A 807=110 I C. 695. Court has no jurisdiction to file agreement made with company to refer to arbitration under certain conditions in as much as an Arbitration Act is made applicable to such agreements by s 152. A. I. R. 1929 Lah. 296=118 Ind Cas 533. This section is subject to the applicability of the Arbitration Act. The last clause appears to be intended to extend the operation of the Arbitration Act even to cases where the subject-matter in dispute could not be made the subject of an Arbitration under the Act 132 Ind Cas. 399=32 P. L R. 444.

Power to compromise with creditors and members.

153. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on all the members or *class of members as the case may be, and also on the company, or, in the case* of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) In this section the expression "company" means any company liable to be wound up under this Act.

Notes.—This section enacts that if a majority in number representing three-fourths the value of the creditors, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all
rrangement could affect only those
the sanction was accorded by the
this section was presented to the
, 40 Ind. Cas. 904=106 P. W. R.
: of the sanction. 41 A. 566=36
M. L. J. 526 P. C.: 32 Ind. Cas 451. In a meeting held under the provisions of this section, the written acceptance of the arrangement by those shareholders and creditors who are not present, either in person or by proxy, cannot be taken into consideration to make up the majority in number representing three-fourths in value of the shareholders or creditors. *Kashmiri Bank* v. *Gokul Chand*, 40 Ind. Cas. 57=40 L. J. 160. There are two classes of orders which can be made under this section. While

* IX of 1899

the company is in existence an order can be passed on the application of the company or by a creditor. After the order of winding up such an order can be made on the application of the liquidator. An order made on the application of the liquidator is only appealable. 89 Ind. Cas. 108=27 Bom. L. R. 655. Under this section the Court can sanction only a *bonafide* and workable scheme. 30 Ind Cas 386; (1891) 1 Ch. 213. The creditors include debenture-holders. *Re. Alabama & Co.* (1891) 1 Ch. (C. A.) 223; *Slater* v. *Darlaston Steel Co.* W. N. (1887) 165. Under the scheme fully paid-up shares can be given to the debenture-holders. *Empire Co*, (1890) 44 Ch. D. 402. Any scheme which is fair and reasonable and made in good faith, will be sanctioned. *Re. Alabama & Co.* (1891) 1 Ch. (C.A.) 213. Vote given on behalf of a deceased member by an executor must be disallowed, as also in the case of a liquidator or a receiver. 108 Ind. Cas. 465=30 Bom. L. R. 197=A. I. R. 1928 Bom. 80. Order for preparing deed of mortgage must be set aside as shareholders had not assented to new scheme A. I. R. 1929 P C 256=119 Ind. Cas. 631. The only persons

[illegible] ; secondly that persons present at meeting have acted *bonafide* and not adverse to interest of classes they represented. 140 Ind. Cas 128=33 P. L. R. 979=A. I. R. 1933 Lah. 51. Duty and function of Court in sanctioning scheme [illegible] 140 Ind. Cas. 133=10 Rang 438=A. I. R. 1932 R [illegible] order rejecting Scheme under s 153. 140 Ind [illegible] 1932 Rang. 154. The onus is [illegible] Ind. Cas. 133=10 Rang 438=A. I. [illegible] g proxy forms used at meeting under s. 153 and [illegible] ould be held is 'judgment' within Letters Patent (Rangoon) cl 13 137 Ind. Cas. 444=10 Rang. 189=A. I. R. 1932 Rang. 96 Under sub-section (2) the Court is to satisfy itself (*i*) that the meeting was duly held and conducted; (*ii*) that the compromise was a real compromise; (*iii*) that it was accepted by competent majority; (*iv*) that the majority was acting in good faith and for common advantage of the whole class, and (*v*) that what they did was reasonably prudent and proper 28 S. L. R. 213= [illegible] can [illegible] ion [illegible] 1934 Cal. 816. The word "arrangement" as used in this section means something analogous to a compromise. 28 S. L. R. [illegible] tion enables the majority of [illegible] 35 P. L. R. 521=A. I. R. 19 [illegible] a company he is no longer a depositor. Such a decree-holder is not bound to attend the meeting of the depositors. 38 C W. N 1171. Where directors of a company are authorized to manage the business and exercise all powers a *proposal made by the Board of Directors in the name of company is valid* and proper. 28 S. L. R. 213=A. I. R 1934 Sind 54. Only class of depositors framing scheme are bound by it. A. I. R 1935 Cal. 398 Court should see that arrangement is reasonable and practicable. A. I R. 1935 Cal 777 Compliance with statutory provisions and interest of minority should be looked to. *Ibid.* Section 153 makes provision not merely for scheme for the resuscitation or re-organisation of companies, but it also provides for scheme of arrangement, which provides for alternative mode of liquidation which the law allows the statutory majority of creditors to substitute for winding up, whether voluntary or under the Court A. I R 1935 Lah. 779. Court cannot modify scheme sanctioned by Court which affects prior decree-holder. A. I. R. 1935 Cal. 117. Company varying rights of different classes of shares in exercise of powers given by memorandum and articles is not tantamount to compromise or arrangement within meaning of section 153. A. I. R. 1935 All. 310.

Conversion of private company into public company.

Conversion of private into public company.

154. (1) A private company may, subject to anything contained in its memorandum or articles, by a special resolution and by filing with the registrar a copy of such resolution and also such a statement in lieu of prospectus as the company, if a public company, would have had to file before

allotting any of its shares or debentures, together with such a duly verified declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company.

(2) Upon the filing of the documents mentioned in sub-section (1), the registrar shall record the change in his books relating to the company.

Notes —A private company is a company which is formed with the intention of carrying on its business without calling in the public or issuing any shares except to the then existing shareholders. (1891) 7 Ch. D. 467 The private character of such a company may at any time be terminated in the manner indicated in this section or by any alteration of its articles depriving it of any one of the features of a private company, but it is to be noted that there is no prohibition in the section against disregarding the articles in so far as they bring the company within the definition—Palmer's *Company Law* p. 363.

PART V.

Winding up.

Preliminary.

Mode of winding up

155. (1) The winding up of a company may be either—

(*i*) by the Court; or

(*ii*) voluntary; or

(*iii*) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of these modes.

Notes —A company incorporated under this Act cannot be put an end to excep through the machinery of winding up *Princess of Reurs v. Bos*, L. R. 5 H. L. 193t The winding up mentioned in clause (1) to section 1, is called compulsory liquidation. Clause (2) makes mention of voluntary winding up and clause (3) makes mention o. voluntary winding up subject to supervision of Court. A voluntary winding up isf deemed to commence at the time of the passing of the resolution authorizing the winding up, *i e*, in the case of a special resolution at the time of the confirmatory resolution. *Horby's Case*, (1868) 37 L J Ch 929; *Davy's Case*, (1868) 6 Eq. 232—cited in Stiebel, p. 1264.

A corporation does not become dissolved at the commencement of either of a voluntary or a compulsory winding up *Kusum* v *Surendra*, 42 Ind. Cas. 455 (Cal.). If a man finds himself by an unconditional contract to take shares in a [illegible] the allotment, but it is eventually made and [illegible] must be taken to have consented to it, and if [illegible] ape his liability by reason of the delay to which [illegible] 134=40 A. 45. The Court can set aside a [illegible] nterests of the creditors and contributories of the company. 48 Ind. Cas. 919=7 P. L. R. 1919. In case of voluntary winding up, liquidator without order from Court can make call and receive payments. But in compulsory winding up there is no provision enabling liquidator to make call without order of Court. 36 C. W. N. 409=139 Ind. Cas. 882=59 C. 1099=A. I. R. 1932 Cal. 691.

Contributories.

Liability as contributories of present and past members.

156. (1) In the event of a company being wound up, every present and past members shall, subject to provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of its winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say):—

(*i*) a past member shall not be liable to contribute if he has ceased to be [illegible]

(*iii*) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;

(*iv*) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member ;

(*v*) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;

(*vi*) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract ;

(*vii*) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company ; but any such sum may be taken into account for the purpose of the final adjustments of the rights

guarantee which has a share ...le, in addition to the amount ...s of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

fully paid shareholders. *National Savings* ... *Anglesea Colliery Co.* (1866) 1 Ch. 555 ; 37 ; *Peveril Gold Mines* (1898) 1 Ch. 122. ... they disclaim all interest. *Marlborough Club Co*, (1868) 5 Eq. 365 ; *Britannia Permanent Benefit Building Society* (1892) 65 L. T. 196 As regards the liabilities of contributories, *vide* 35 Ind. Cas. 159=38 A. 347 ; 36 Ind. Cas. 791 ; 38 Ind. Cas 233 ; 81 Ind. Cas. 508. An intention to forfeit not claimed into effect is no forfeiture of all. 10 Pat 299=1930 Ind. Cas. 534=12 Pat. L. T. 215=A. I. R. 1931 Pat. 44. Section 156 proceeds on the assumption that the contributories are all innocent parties and that they must ... theirs, ... to that ...ntation ...ries as ... R. 1934 ...lity on ... rights ...member ...he calls ...e company ... R. 1934 Lab. 1015=36 P. I ... Fact of name appearing fastens liability on winding ... J 859=54 A. 827=60 I. A. ...1=35 Bom L. R. ... J. 157=A I. R. 1932 P. C. 240 (P. C.). Member ... mere death A. I. R. 1933 All. 334=55 A. 419=1933 A. L. J. 233=143 Ind. Cas. 762. In liquidation proceedings, shareholders are saddled with new liability in respect of unpaid calls. Suit by liquidator of public company to recover unpaid amount of calls from shareholders is six years A. I. R 1935 Lab 335.

... (1868) 12 Eq. 335 (n) ; *Needham's Case* (1867) 4 Eq 135 ; but if for any reason this

is undesirable, it would seem the two lists may be settled simultaneously. *Andrew's Case* (1887) 3 Ch. 191; but see *Weston's Case*, (1868) 6 Eq. 17—cited in *Stiebel* p. 1092. As to the respective rights of the two classes, *vide Hilbert* v. *Banner*, L. R. 5 H. L. 28; *Webb* v. *Whiffin*, L. R. 5 H. L. 718; *Brett's Case*, 6 App. Cas. 800; *Morris's Case*, L. R. 7 Ch 200 S C. 8 Ch. 810. The list also distinguishes between persons who are contributories in their own right and persons who are contributories as representatives of others. Palmer's *Company Law*, p. 396.

Liability of directors whose liability is unlimited

157. In the winding up of a limited company any director whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

Provided that—

(*i*) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(*ii*) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office,

(*iii*) subject to the articles a director shall not be liable to make such further co[illegible] essary to require that contribution in [illegible] the company, and the costs, charges an[illegible]

Notes.—Liability attaches on winding up under S. 157. 59 C. 1099=37 C. W. N. 409=A. I. R. 1932 Cal. 691.

Meaning of "contributory"

158. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Notes—A mere debtor of a company in liquidation is not a contributory. (1926) All. 101; (1866) 7 Eq 379 at p 387; (1865) 1 Ch App. 555; (1867) 3 Ch. App. 161 at p. 164; (1878) 8 Ch. D 679 at p. 708. It includes any person alleged to be a contributory. 57 Ind. Cas. 223=(1919) 1 Lah 237. It includes a fully paid up shareholder. 36 Ind. Cas. 980; see also 89 Ind Cas 994. A person who agrees to be a member of the company on some condition does not become a member if the condition is not fulfilled and can not be placed on the list of contributories. A. I R. 1928 Lah. 234=101 Ind. Cas. 192; 107 Ind Cas 492 Subscriber remains member of company till his shares are validly transferred or company accepts surrender of shares. 133 Ind. Cas. 424=A. I. R. 1931 All 701

Nature of liability of contributory.

159. (1) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the Presidency-towns.

[illegible] *ltra vires* transaction by company [illegible] pay it during liquidation proceedings. A. I. R. 1931 Mad. 792=60 M. L. J. 270=33 M. L. W. 741. Second appeal lies against claim less than Rs. 500. 140 Ind. Cas. 252=59 C. 1186=36 C. W. N. 589=A. I. R. 1932 Cal. 716. High Court has power to order contributories to pay official liquidator direct. 35 C. W. N. 409=59 C 1099=A. I. R. 1932 Cal. 691

160. (1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

Contributories in case of death of member

or heirs make default in paying any money dings may be taken for administering the pro- whether movable or immovable, or both, and of compelling payment thereout of the money due.

Notes.—Where the is applicable. *Re Mugg* A nominee of the com

nt of the assets if any, which came into their hands from the deceased shareholders. A. I. R. 1931 Pat. 44=130 Ind. Cas 534=10 Pat. 249; see also 36 Bom. L. R. 1002=A. I. R. 1934 Bom 469; A. I. R 1933 All. 334=55 A 417=1933 A. L. J. 233=143 Ind. Cas. 762. Illegally removed member is still a member. 133 Ind. Cas. 424. To fix a deceased contributory's share with the liability of person representing his estate should be brought on record before an effective order may be made. A I. R. 1930 All. 503=124 Ind. Cas 28. There is no limitation to bring representations on record. 55 A. 417=A. I. R. 1933 All. 334=1933 A. L. J 233

Contributories in case of insolvency of member.

161. If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories, then—

(1) his assignees shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

. (1906) 1 ntributories 5 Ch. 492; ; *Re. G. E.*

Winding up by Court.

Circumstances in which company may be wound up by Court

162. A company may be wound up by the Court—

(*i*) if the company has by special resolution resolved that the company be wound up by the Court:

(*ii*) if default is made in filing the statutory report or in holding the statutory meeting:

(*iii*) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

(*iv*) if the number of members is reduced, in the case of a private com- y, below seven:

equitable that the company should be wound up.

Notes—The Court should exercise power under this section only on strong ground. 86 Ind. Cas. 135=48 M. 489; see also 39 B 16; 31 P. R. 1914; 39

334. It is only in extreme cases that a Court will disregard the wishes of the domestic forum and . 59 Ind. Cas. 524 ; see also 59 Ind. Cas. 542= 47 C. 654 ; 23 C. W. N. 844=38 Ind. Cas. 561. A creditor's application for winding up must be dismissed where a company has a *bonafide* defence to the claim. A. I. R. 1925 Rang. 128=2 Rang. 326=84 Ind. Cas. 1021. That there has been in the prospectus, reholders may waive o comply with statuto. right for the winding up of the company. A. I. R. 1929 Mad 265=106 Ind. Cas. 423 ; but see A. I R. 1930 Lah. 777=126 Ind Cas. 185. Non-payment of dividend regularly is no ground. 136. Ind. Cas. 114=1932 A. L. J. 825=54 C. L. J. 439=36 C. W. N. 54=55 M. 180=A. I. R 1932 P. C. I, (P. C). Where one of the objects of the company is illegal, it should be wound up. A. I. R. 1933 Mad. 16=56 M. 26=33 Cr. L. J. 792=63 M. L. J. 554. Where one shareholder has preponderating voice, it is of itself no reason for winding up. 136 Ind. Cas. 114=1932 A. L J. 825=61 M. L J. 783=54 C. L. J. 439=36 C W. N. 54=58 I. A. 416 =34 Bom. L. R 321=A. I. R. 1932 P. C. I. In ordering compulsory winding up

within fourteen days of the issue of 126 Ind. Cas. 74.

Clause (v) —*V de* 117 Ind. Cas 78=A. I. R. 1929 Lah. 651 ; 58C. 716=A. I. R. 1931 Cal. 642 ; A. I. R. 1932 Rang. 75=10 Rang. 143 ; A. I. R. 1933 Lah. 301 ; A. I. R. 1932 Lah. 571.

Clause (VI).—A. I. R 1930 Mad. 240=120 Ind Cas. 372 ; A I. R. 1929 Bom. 8=114 Ind. Cas. 849 ; A. I. R. 1928 Rang. 36=107 Ind Cas. 860 ; 86 Ind. Cas 914 ; 58 C. 716=A. I. R. 1931 Cal. 692=133 Ind. Cas. 321 ; 36 C. W. N. 54=54C. L. J. 439=61 M. L. J. 783. (P. C.).

Company when deemed unable to pay its debts.

163. A company shall be deemed to be unable to pay its debts—

(*i*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or

(*ii*) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part ; or

(*iii*) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

Cas. 5

Ibid.

that tl

pay its debts, and this is evidence relied on. Almost the only answer open to the company is to show that the debt claimed is *bonafide* disputed, in which case a winding up petition is not a proper mode of enforcing it. Palmer's *Company Law* citing *Re. Gold Hill Mines*, 23 Ch. D. 201 ; see also, 58 Ind. Cas. 561=23 C. W. N. 844 ; (1874) 19 Eq. 444 ; 39 B. 47 ; (1924) 2 Rang. 575. Conditions of service must be strictly complied with. Notice must be served at the registered office. A. I. R 1931 Cal. 692=58 C. 716. "Demand under his hand" means demand signed by creditor himself. 133 Ind. Cas. 483=9 Rang. 813=A. I. R. 1931 Rang. 306.

164. Where the High Court makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding up the company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

Winding up may be referred to District Court.

Notes—Where the District Judge has [illegible] of the place all the functions of supervisin, [illegible] acquires the jurisdiction to pass orders in [illegible] pany *Beharilal* v. *Kundanlal*, 27 C. W. N. 509=69 Ind Cas. 355 P. C. Such jurisdiction can be exercised by a District Court even when the contributories do not live within its jurisdiction. 54 Ind. Cas. 384; 106 Ind. Cas. 808=A. I. R. 1928 Lah. 376

165. If during the progress of a winding up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court having jurisdiction to wind up companies, the High Court may transfer the same to such other Court, and thereupon the winding up shall proceed in such other District Court.

Transfer of winding up from one District Court to another.

Notes—An order for the winding up of a company was made by the Punjab Court, and under section 164 of the Companies Act. Subsequent proceedings were [illegible] been passed; and that as the balance of convenience was in favour of latter course, the official liquidator was authorised to proceed accordingly. 54 Ind. Cas. 384.

166. An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provisions as to applications for winding up.

Provided that—

(*a*) a contributory shall not be entitled to present a petition for winding up a company unless—

(*i*) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(*ii*) the shares in respect of which he is a contributory or some of them either were originally allotted to him, or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(*b*) a petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;

(*c*) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for wind- [illegible] n of the Court.

[illegible] cannot be curtailed by the Articles of [illegible] 122. A creditor or an assignee of a debt can make a petition. *Vide* 5 C. D. 959.; 72 L. J. Ch. 624; 27 C. D. 278; 32 C. D.

34. It is only in extreme cases that a Court will disregard the wishes of the domestic forum and 59 Ind. Cas. 524; see also 59 Ind. Cas. 542= 47 C. 654; 23 C. W. N. 844=38 Ind. Cas. ... creditor's application for winding up must be dismissed where a com[illegible] claim A. I. R. 1925 Rang. 128=2 Rang. [illegible] has been a fraud in the promotion or fra[illegible] prospectus, is insufficient to found a winding up order [illegible] may waive the fraud. 49 C. 399=A. I R. 1922 Cal. 365. Mere failure to comply with statutory demand does not entitle the creditors to ask as a matter of right for the winding up of the company. A. I. R. 1929 Mad 265=106 Ind. Cas. 423; but see A. I. R 1930 Lah. 777=126 Ind. Cas. 185. Non-payment of dividend regularly is no ground. 136. Ind. Cas. 114=1932 A L. J. 825=54 C. L. J. 439=36 C. W. N. 54=55 M. 180=A. I. R. 1932 P. C. I, (P. C). Where one of the objects of the company is illegal, it should be wound up. A. I. R. 1933 Mad. 16=56 M. 26=33 Cr. L. J. 792=63 M. L. J. 554. Where one shareholder has preponderating voice, it is of itself no reason for winding up. 136 Ind. Cas. 114=1932 A. L J. 825=61 M. L. J. 783=54 C. L. J. 439=36 C. W. N. 54=58 I. A. 416

Clause (v)—*V de* 117 Ind. Cas. 78=A. I. R. 1929 Lah. 651; 58C. 716=A. I. R. 1931 Cal. 642; A. I. R. 1932 Rang. 75=10 Rang. 143; A. I. R. 1933 Lah. 301; A. I. R. 1932 Lah. 571.

Clause (VI).—A. I. R 1930 Mad. 240=120 Ind. Cas. 372; A. I. R. 1929 Bom. 8=114 Ind. Cas. 849; A. I. R. 1928 Rang. 36=107 Ind. Cas. 860; 86 Ind. Cas. 914; 58 C. 716=A. I. R. 1931 Cal. 692=133 Ind. Cas. 321; 36 C. W. N. 54=54C. L. J. 439=61 M. L. J. 783. (P. C.)

Company when deemed unable to pay its debts

163. A company shall be deemed to be unable to pay its debts—

(*i*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three [illegible] or compound for it to

[illegible] or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(*iii*) if it is proved to [illegible] unable to pay its debts, and, [illegible] its debts, the Court shall tal[illegible] bilities of the company.

Cas. 5 [illegible]
Ibid. [illegible]

himself. 133 Ind Cas. 483=9 Rang. 313=A I. R. 1931 Rang. 306.

164. Where the High Court makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding up the company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

Winding up may be referred to District Court.

Notes—Where the District Judge has assigned to the Additional District Judge of the place all the *functions* of supervising the liquidation of a company, the latter acquires the jurisdiction to pass orders in the matter of the winding up of the com- [illegible] 27 C W. N. 509=69 Ind Cas. 355 P. C. Such [illegible] y a District Court even when the contributories [illegible] 54 Ind. Cas. 384; 106 Ind. Cas. 808=A. I. R. 1928 Lah. 376.

165. If during the progress of a winding up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court having jurisdiction to wind up companies, the High Court may transfer the same to such other Court, and thereupon the winding up shall proceed in such other District Court.

Transfer of winding up from one District Court to another.

Notes—An order for the winding up of a company was made by the Punjab Court, and under section 164 of the Companies Act. Subsequent proceedings were [illegible] been passed; and that as the balance of convenience was in favour of latter course, the official liquidator was authorised to proceed accordingly. 54 Ind. Cas. 384.

166. An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provisions as to applications for winding up.

Provided that—

(*a*) a contributory shall not be entitled to present a petition for winding up a company unless—

(*i*) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(*ii*) the shares in respect of which he is a contributory or some of them either were originally allotted to him, or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(*b*) a petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;

[illegible], a petition for winding up a com- [illegible] until such security for costs has [illegible] until a *prima facie* case for winding up has been established to the satisfaction of the Court.

Notes—The right is a statutory right and cannot be curtailed by the Articles of Association. *Re. Pevril Gold Co*, (1898) 1 Ch. 122. A creditor or an assignee of a debt can make a petition. *Vide* 5 C. D. 959.; 72 L. J. Ch. 624; 27 C. D. 278; 32 C. D.

i file a petition after making a special
App. 737 ; 20 Ch. D. 169 ; 20 Ch. D.
up a company may be adjourned to
. be effected to the advantage of the
majority of the creditors opposing the petition. 88 Ind. Cas. 138. Contributory can apply for winding up of company. 138 Ind. Cas. 344=33 P. L. R. 754=13 Lah. 603=A. I. R. 1932 Lah. 571.

167. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Effect of winding up order.

Notes—A secured creditor is not affected by a winding up order. 74 Ind. Cas. 187=3 Lah. 59 The form of order under the Company's Act, for dissolution of a company in compulsory liquidation for undistributed assets being in the hands of the liquidator shown in 47 C. 620.

168. A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Commencement of winding up by Court.

Notes—After a petition had been presented by certain creditors to the District Judge of Lahore for the winding up by the Court of the People's Bank, Ltd. and the

553. On the winding up order being passed the company becomes as from the date of the petition incapable of entering into contracts without the sanction of the Court. (1887) A. C. 575 ; A. I R 1930 Mad. 1012=59 M L. J. 826 ; but see A. I. R. 1931 P. C. 1=55 M. 180=36 C.W.N. 54=61 M. L. J. 783.

169. The Court may, at any time after the presentation of the petition for winding up a company under this Act, and before making an order for winding up the com-
. creditor or contributory of
or proceeding against the

Court may grant injunction.

Notes—Even in voluntary liquidation the Court has some power as under this section. *National Bank* v. *Gopal Das*, 91 Ind. Cas. 1052. Under ss. 207 and 215 read with s. 169, the Court has power, in order to protect the assets of the bank for its other creditors even in cases of voluntary liquidation, to stay the execution of the

made and the lapse of three weeks. Any such neglect must be judged by reference to the facts of each particular case, and when the defence is that the date is disputed, all that the Court has first to see is whether that dispute is, on the face of it, genuine or merely a cloak of the company's real inability to pay just debts. 27 Ind. Cas. 44=39 B. 47. Where the company is insolvent a provisional liquidator may be appointed. 21 Ind Cas. 577=31 P. R. 1914=337 P. L. R. 1913. A Court can rectify its own mistake. 51 Ind. Cas. 723 This section does not bar an application to set aside an *exparte* order. 72 Ind. Cas. 106 Carelessness or ignorance of a pleader is not sufficient to extend time fixed by s. 169 73 Ind. Cas. 211. Where the liquidator has done all he could to comply with the provisions of law, he is entitled to extension. 63 Ind. Cas. 607.

170. (1) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

Powers of Court on hearing petition.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Notes—An order to wind up two companies cannot be made on one petition. *Shields Marine Insurance*, (1868) 16 W R 69. Where a company is insolvent, a creditor whose debt is presently payable is entitled to a winding up order. 11 H. L. C. 389; (1870) 5 Ch. 363; L R 5 H L 176; (1873) 17 Eq 1; (1906) 2 Ch 327. But even in such a case the power of the Court is discretionary. (1906) 2 Ch 327; see also 48 L J. Ch. 753. The Court may also adjourn the hearing. 34 Beav 314; 17 Eq. 1; but see (1867) 36 L J Ch. 827; 24 Ch. D. 259. An order is not to be refused on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets. (1909) 1 Ir. 49; 24 C D. 259; (1905) 2 Ch 345; (1906) 1 Ch. 841; (1906) 2 Ch. 327.

171. When a winding up order has been made, no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

Suits stayed on winding up order.

... into a secured creditor after agreement to create a charge. ... rs should not be allowed to change their position after that date 1927 Bom. 167. Limitation does not run after an order of winding up 1927 All. 161 (F. B) The effect of this section is not to restrict ... possess in virtue o ... Public Demands ... C. 328=96 Ind Cas. 37. A suit can be instituted with the leave of the winding up Court 41 A 432=50 Ind. Cas 115; 15 Ind. Cas 115; 58 Ind. Cas. 607; 37 Ind. Cas. 427=3 O. L. J. 641; 20 C. W. N. 715=88 Ind. Cas. 754 As regards what amounts to permission to institute suits, *vide* 37 Ind Cas. 791 Leave under s 171 means leave by the winding up Court and when once given includes all subsidiary proceedings. 50 Ind. Cas 115. Once a winding up order has been made this section would apply and no suit or other proceedings may be proceeded with against the company except by the leave of the Court. 58 C. 946=133. Ind. Cas. 186. A suit by the Government is not an exception. 134 Ind. Cas. 429. The Court has authority to see whether winding up proceedings would be properly safeguarded or not by grant or withholding of leave and only Appellate Court can question his decision. 124 Ind. Cas. 28. Leave should be refused absolutely only in exceptional cases. 119 Ind. Cas. 273=A. I R 1929 All 353 This section is applicable both to liquidation under Courts' supervision and liquidation by Court itself 109 Ind. Cas. 22 An order of the lower Court will not generally be disturbed by the Appellate Court. 37 Ind. Cas. 791, see also 36 Ind Cas 618. A director cannot institute a suit after winding up order 36 Ind Cas. 617. As to when such permission is generally given, *vide* 47 Ind. Cas. 1005. An appeal by a company is not barred by this section. 47 Ind Cas. 392. Crown debts have no priority 137 Ind. Cas. 870=59 C. 327=A. I R. 1932 Cal. 430 Objection as to want of leave not taken in Court of first instance cannot be raised in appeal. 37 C. W. N 909=A. I. R. 1933 Cal. 809. Leave of Court is essential even in case of execution of decree obtained by Government. 134 Ind. Cas. 429=A. I R. 1932 Pat. 1. Prohibition in s 171 does not override Criminal Procedure s. 145. 143 Ind. Cas. 795=1933 Cr. C. 705=37 C. W. N. 932=34 Cr. L. J. 640=A. I. R. 1933 Cal. 433. Where secured creditor applies for leave to sue leave should ordinarily be granted. 139 Ind. Cas. 504=33 P. L. R. 555=A. I. R. 1932 Lah. 475.

Court cannot permit proceeding which would give priority to any creditor and which would absorb all available assets. Crown debts have no priority. 134 Ind. Cas. 429=A. I. R. 1932 Pat. 1. Where pronote in favour of a Bank under liquidation is endorsed in favour of another Bank, and the latter contemplate to file a suit on the basis of the same against the original debtor of the Bank in liquidation, *prima facie* the Bank in liquidation is a proper party to the suit, and if the latter Bank apply for permission to make the Bank in liquidation a party to the suit the permission as a rule should be granted irrespective of whether any relief could be granted against the Bank under liquidation. A. I. R. 1934 Lah. 328=36 P. L. R. 217=150 Ind. Cas. 670

Copy of winding up order to be filed with registrar.

172. (1) On the making of a winding up order, it shall be the duty of the company forthwith to file with the registrar a . n the wind-

(2) On the filing of a copy . . . . . shall make a minute thereof in his books relating to the company, and shall notify in the local official Gazettee that such an order has been made.

(3) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

Notes.—The position of servants, clerks and other employees of a company on the making of a compulsory order is that such order operates as a notice of dismissal to them as from the date of the order, and any right they may have to notice runs from that date. *Stiebel*, p 1220 citing *Chapman's Case* (1866) 1 Eq. 346; *Macdowall's Case* (1886), 32 Ch. D. 366; *Mid and Counties District Bank* v. *Attwood*. (1905) 1 Ch. 357; *Measures* v. *Measures*, (1910) 1 Ch 336; (1910) 2 Ch. 248. If the liquidator employs them in the winding up it may be that a fresh contract for employment by the liquidator on the same terms as the previous employment by the company may be inferred. *Harding's Case* (1866) 3 Eq. 341, but this will not ordinarily be the case, 32 Ch D. 366—*Stiebel*, p. 1220.

Power of Court to stay winding up.

173. The Court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Notes.—The power to make an order for the stay of proceedings under a voluntary winding up has been given to the Courts in India by section 215 . . . Act. 49 Ind. Cas. 412. In dealing with . . . in voluntary liquidation of a certain com- . . . of the proceedings will be conducive or . . . to the interests of the public at large. . . . Ch. 174; see also In *re. Steamship* . . . *chieff Electric Battery Syndicate, Ltd.*

Court may have regard to wishes of creditors or contributories.

174. The Court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

. . . an a majo- . . . winding up . . . f creditors. . . . applicable . . . *Rubber and Produce Investment Trust*, (1915) 1 Ch 382=84 L. J. Ch. 534. Section 140 of the Indian Companies Act, (VI of 1882) does not make it obligatory on the Court to comply with the wishes of the majority of creditors. *M. A. J. Noble* v. *Bank of* . . . In a compulsory winding u . . . to come in and fight for t . . . 1931 Cal. 391= 58 C. 62. . . . to be heard upon

the application to wind up the company. *Ibid.* In winding up a solvent company the wishes of the contributories are to be considered. 36 C. W. N. 54=54 C. L. J. 439 P. C.

Official Liquidators.

Appointment of official liquidator.

175. (1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a person, or persons, to be called an official liquidator or official liquidators.

(2) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up.

(3) If more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act by this Act required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons.

(4) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment.

(5) The acts of an official liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment: Provided that

acts done by an

invalid.

nds of an official liquidator.

so entirely a

t an Appellate

ances or unless

it can be shown that the Judge had acted on a wrong principle. *M. A. J. Noble v. Bank of Burma*, 17 Ind. Cas. 853=5 Bur L T 193; A I. R. (1928) Rang. 36. The Court has jurisdiction under clause (2) to appoint a provisional liquidator and such a provisional liquidator need not be the official receiver. *Unionist Club*, (1891) W. N. 64; *Bound & Co.* (1893) W. N. 21. *North Wales Gunpowder*, (1892) 2 Q. B. 220; *Mercantile Bank of Australia*, (1892) 2 Ch. 204. But it is usual in such a case to appoint the Official Receiver as the provisional liquidator. *Mercantile Bank of Australia*, (1892) 2 Ch. 204. When one of two

lution appointing them

Liquidator should be

133 Ind. Cas. 186=

58 C. 946= A. I. R. 1932 Cal. 76.

Clause (6).—This clause avoids any question of competition between a receiver and an official liquidator. The word 'assets' means assets of the company and includes property subject to charge. *58 C. 946=133 Ind. Cas. 186.*

Resignations, removals, filling up vacancies and compensation.

176. (1) Any official liquidator may resign or be removed by the Court on due cause shown.

(2) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court.

(3) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remunerations shall be distributed amongst them in such proportions as the Court directs.

directors and a liquidator and committee of inspection nominated by the contri-
investigation. At the
contributories which
ly, however, a very
notwithstanding the
, hopelessly insolvent.
The liquidator and committee of inspection acting quite *bona fide* and in pursuance of what they believed to be their duty under the order appointing them continued to treat the liquidation as a contributories' liquidation and proposed to spend the credi-
ies of the creditors The
committee of inspection:
liquidator under section
908, which corresponds to
sub section (1). *Re Rubber and Produce Invest Trust* (1915) 1 Ch. 382; see also *Re Oxford Building and Investment Co* (1883) 49 L. T. 495; *Re Exparte Charlesworth*, (1887) 36 Ch. D. 299.

177. The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name.

Official liquidator.

Notes.—An official liquidator shall be described in his official name. *vide* 18 A 198.

178. (1) The official liquidator shall take into his custody, or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

Custody of company's property.

(2) If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.

Notes.—He can take into custody or under his control all the properties and things in action to which the company is or appears to be entitled, *vide Kent Coalfield Syndicate*, (1898) 1 Q B 754; see also 36 C. W. N 54=58 I. A. 416=34 Bom. L. R. 321.

179. The official liquidator shall have power, with the sanction of the Court, to do the following things :—

Powers of official liquidator.

(*a*) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(*b*) to carry on the business of the company so far as may be necessary for the beneficial winding up of the same;

(*c*) to sell the immovable and movable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(*d*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;

(*e*) to prove, frank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(*f*) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;

(*g*) to raise on the security of the assets of the company any money requisite;

(*h*) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the

. . empowered shall be deemed

. dministrator General ;

necessary for winding up the

Clause (a) —In a suit for or against an Official Liquidator the company's name should be used. *Turquand* v *Kirby*, 4 Eq. 123 ; *Kent* v. *La Communante des Saeurs de Charite* (1903) A. C. 220 ; *Kintreas' Case*, (1869) 5 Ch 95. But in certain cases the liquidator may be the proper plaintiff. (1903) A C. 220. The liquidator possesses higher rights than the company. *London Celluloid Co.*, (1888) 39 Ch. D. 190. He can call in question certain acts of the companies (1903) A. C 220. Under certain circumstances the liquidator is personally liable, *Original Hartelpool Collieries*, (1882) 51 L J. Ch. 508 He can sue in *forma pauperis* if the Company is a pauper. 41 M 624 Sanction of the liquidating Court is required and not that of the Court which is dealing with the suit. 1 Lah. 237. He should not appeal without such sanction. 43A. 433. But if he appeals without such sanction the appeal is not incompetent, but if he be unsuccessful he would be personally liable for costs (1914) A C. 823. A sale without the permission of the Court, of the assets after winding up order is voidable at the instance of an official liquidator. 38 Ind. Cas. 91. Cause of action for a suit by the liquidator to realize contribution from the contributories arises only on the appointment of the liquidator 95 Ind. Cas. 927=48A. 580. The fact that the calls are barred by them as against the company and that the company could not realise them by lapse of time is no answer to the liquidator's claim for contribution. 10 Pat. 249=A. I. R. 1931 Pat. 44.

Clause (b).—He can continue the business for administration and realisation. 17 Ch. D. 35.

Clause (c).—The official liquidator may ask for the direction of Court and the Court may decline the order. *Vide South Eastern Company*, (1870) 21 L. T. 220 *Exparte Totty* (1860) 29 L. J. Ch. 702.

Clause (g) —*Vide* 18 C. 31.

180. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Discretion of official liquidator.

181. The official liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties : Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

Provision for legal assistance to official liquidator.

Notes.—When no such sanction has been obtained, the validity of the acts of the pleader is not affected. 5 Lah 414

182. The official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

Official books to be kept by liquidator in winding up.

Exercise and control of liquidator's powers.

183. (1) Subject to the provisions of this Act the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting.

(2) The official liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

in manner prescribed for the winding up.

liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(5) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

Clause (2).—In the winding up of a solvent company the Court and also the Official Liquidator as to all matters affecting the contributories as a class, should have particular regard to the wishes as proved by any sufficient evidence. 36 C. W. N. 54.

Ordinary Powers of Court.

Settlement of list of contributories and application of assets.

184. (1) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the com-

ies.

istinguish between

who are contribut-

Notes.—The applicant contended that the General Manager of the company, who allotted the shares to him not having been properly given the authority in this

ellant not only paid

a shareholder with-

allotment. *Held* that

Bank, 28 Ind. Cas 53. A subscriber to the Memorandum of Association remains a member of the company, until such time as either the company, which, of course, must be authorised by the Articles of Association, accepts a surrender of the shares for valid reason or the subscriber himself pays for the shares and validly transfers them to somebody else. 133 Ind Cas 474=A I R 1931 All 701 The shareholder who seeks to be dis-

d have got his name taken off the

has before the commencement of the

removed, that will be sufficient. A

ories if before the commencement of winding up he has not only repudiated his shares but has also asserted his right to repudiate them in an action by the company to enforce calls upon him. *Ibid.* The appellant admitted that he had originally agreed to purchase 70 shares in the company under liquidation, but objected to his name being included in the list of

een induced by false and fraudulent

Held, that the objection was unten-

took shares in the company upon the

him 24 Ind. Cas. 236. Liability of

of assets. 130 Ind. Cas. 534=10 Pat. 249=12 P. L. T. 215=A. I. R. 1931 Pat. 44.

185. The Court may, at any time after making a winding up order, require any coutributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the official liquidator any money, property of documents in his hands to which the company is *prima facie* entitled

Power to require delivery of property.

Notes—An official liquidator is not entitled by summary order to a refund of money realized by a creditor of the Bank before the order of winding up was passed
payment of debts. The liquida-
the amount realized by
iquidators of the People's
money paid to creditor
nd. Cas 209=26 S. L R. 102=
A I. R 1932 Sind 106 Court has summary power to *interim* order in respect of property to which *prima facie* company is entitled. 142 Ind. Cas. 766=14 Lah 68 =34 P. L. R. 388=A. I R 1933 Lah 437.

186. (1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

Power to order payment of debts by contributory.

(2) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance :

Provided that, in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Notes—Sub-section (1) does nothing more than create a new machinery for bringing in debts due by a contributory to the company. It does not create new liabilities or confer new rights ; it merely provides a summary procedure for enforcing existing legal liabilities The words "at any time," in the sub-section do not

to the company. The jurisdiction is permissible, but when a case is made out for the exercise thereof, it should not be declined unless very cogent reasons to the contrary are shown. *The Lahore Bank* v *Kidar Nath*, 31 Ind. Cas. 746. The summary procedure under this section can be resorted to to recover money from a firm, by selecting from among the partners one who is a contributory and calling upon him to liquidate the whole debt. 4 Lah. 239=77 Ind. Cas 338 ; see also 53 Ind Cas 653 ; 7 Ind Cas. 724 ; 3 Lah. 382 ; 3 Lah. L J 80 An order of payment made under section 186 must be regarded as a decree and enforced as such. *Jharya*
as. 997. A representative of a shareholder is
the assets in his hands. 10 Pat. 249=A. I. R. 19
tors within three years can not be dismissed as
t, s. 3 or Art. 181 142 Ind. Cas. 7=35 Bom. L. R. 319=1933 A L. J. 175=37 C. W. N. 379=64 M. L. J. 403= 57 C. L. J. 166=54 A. 1067=60 I. A. 13=A. I R. 1933 P. C. 63 (P. C.). Sums barred at the date of application are not to be included. *Ibid* No new right is conferred on person applying 1933 A. L. J 1203=A I. R. 1933 All. 783 (F B) Where the

company on account of the arrears in the calls under s 186 of the Act and if there is any dispute between the parties he can adjudicate on it under s. 215. A. I. R. 1934 Lah. 362=15 Lah 302=147 Ind. Cas. 739.

Power of Court to make calls.

187. (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained

calls on and order payment th
time being settled on the list of
for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves

(2) In making the call the Court may take into consideration the probability that some of the contributories may partly

Notes —The power and duties of the Court
tributories conferred by the section may be exer
by the Liquidator as an officer of the Court. Stiebel, p. 1166. The power is discretionary with th
When a Court
for which they
right of a co
through the C
they originally subscribed in the event of insolvency subsequently overtaking the company and the calls are recoverable although they have become statute-barred under Article 112 of the Limitation Act and ceased to be recoverable debts by them. *Jagannath Pershad* v. *U. P. Flour and Oil Mills Co. Ltd*, 35 Ind Cas 159=38 A. 347=14 A L. J. 349. Where a shareholder has contracted to contribute a certain amount to be applied in payment of the debts and liabilities of the company, it is inconsistent with his position as a shareholder to claim back any of that money, owing to the misconduct of the managing director. *Narottam Morarji* v. *Indian Specie Bank*, 19 Bom. L. R. 615=41 Ind. Cas. 261. This section is not confined to original calls but includes unpaid calls made before the winding up as well as those made after the winding up. A claim for the recovery of the balance due on account of the price of shares purchased, for which a call has been made before the company goes into liquidation but has not been assured by payment, is enforceable by a summary action under the Company's Act on the motion of the official liquidator. (1898) 9 Ch. D. 595; 47 L. J. Ch. 801; 12 Ind Cas. 958.

Power to order payment into bank.

188. The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of Bengal, the Bank of Madras, or the Bank of Bombay as the case may be, or any branch thereof, respectively, to the account of the official liquidator instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Notes —The Bank of Bengal, the Bank of Madras or the Bank of Bombay now refers to Imperial Bank of India, If a liquidator who has obtained an order wishes to enforce it he must obtain a further order for payment to himself *Leeds Banking Co.*, (1866) 1 Ch. 150.

Regulation of account with Court.

189. All moneys, bills, hundis, notes, and other securities paid and delivered into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, or any branch thereof, respectively, in the event of a company being wound up by the Court, shall be subject in all respects to the orders of the Court.

Notes.—The Bank of Bengal, the Bank of Madras or the Bank of Bombay now refers to Imperial Bank of India. *Vide* s. 32 of the Imperial Bank of India Act, 1920.

190. (1) An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

Order on contributory conclusive evidence.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings whatsoever.

191. The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Power to exclude creditors not proving in time.

192. The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto

Adjustment of rights of contributories.

Notes—After payment of costs, charges, expenses of the liquidation and all the debts of the company, the liquidator is to adjust the rights of the contributories *inter se*. *Anglesea Colliery Co* (1866) 1 Ch. 55. Apart from any special provision in the articles the rule is that the property of the company, including its uncalled capital [*Webb* v. *Whiffin*, (1872) L. R. 5 H. L. 711], is, if all the shares are of equal nominal value divisible among the contributories as follows: that is to say, (1) If such property is not sufficient to repay to the contributories the amount paid [illegible] loss is borne [illegible] respectively, [illegible] ore than suffi- [illegible] surplus after [illegible] portion to the number of shares held by them respectively. Stiebel p. 1254 citing (1889) 14 A. C. 525.

Every shareholder is entitled to the proportionate part of the assets of the company. *Birch* v. *Cropper*, (1889), 14 A. C 525; see also *Wakefield Rolling Stock Co.*, (1892) 3 Ch. 165; *Espuela Land and Co.*, (1909) 2 Ch. 187.

193. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

Power to order costs.

Notes.—Where a lease provided that if lessee (a company) caused delay in payment of rent, the landlords would be entitled to recover the arrears with interest "*from the buildings which may have been erected on the land.*" *Held* (1) that in equity a charge was created on the buildings when they came into existence: and (2) that although the charge did not amount to a transfer or a mortgage, it gave a right of priority to the land lords over the unsecured creditors of the company in a *winding up*. *Keshav Lal* v. *Girdhari Lal*, 27 Ind. Cas. 34.

194 (1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

Dissolution of company.

(2) The order shall be reported within fifteen days of the making thereof by the official liquidator to the Registrar, who shall make in his books a minute of the dissolution of the company.

(3) If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which he is in default.

Notes—Unless the dissolution is set aside no action can be taken against the promoters, directors, etc. (1891) 2 Ch. 73.

Extraordinary Powers of Court.

Power to summon persons suspected of having property of company.

195. (1) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

(2) The Court may examine him on oath concerning the same, either by words of mouth or on written interrogatories, and may reduce his answers to writing and ... him to sign them

(3) The
or power re
produced b
the Court sh... ... - ,
relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

Notes—Before granting an application for the discovery and inspection of the books anc ... f its Directors, the Court ... the purposes of the winding up ... Directors and Manager. It is in the discretion of the Court conducting the winding up to determine whether it will exercise the powers vested in it, but the discretion must be exercised judicially and not without consideration 28 Ind Cas 287. The examination under this section is a private one and petitioning creditors should not be allowed to attend the same, particularly when the creditor who seeks to attend is engaged in litigation with the company in liquidation. *Moolda Daward Cotton Manufacturing Co. Ltd. In re.* 1 Rang. 384=1924 Rang. 24. The scope of examination under this section is to seek information on matters which may be just or beneficial for the winding up of the Company. A. I. R. 1931 Lah. 8=139 Ind. Cas. 407. The powers of the Court given by this section is very wide and is not necessary that the Court must first determine that the person called upon to furnish the information does actually possess the information. A. I. R. 1931. Lah. 8=130 Ind. Cas. 407. On search or inspection the party can not take copies but can only take notes of such search or inspection A. I. R. 1930 Cal. 521 Allowing services of counsel or not in inquiry under s. 195 is discretionary. 130 Ind. Cas. 407=A. I. R. 1931 Lah. 8. *Liquidator being officer of Court* all reasonable information as to past transactions must be given to him. Creditor who refuses to do so can be summoned under s. 195. A. I. R. 1931 Bom. 2=54 B 718=32 Bom. L. R. 953=127 Ind. Cas. 82. English decisions are not binding. 143 Ind. Cas. 482=55 A. 496=1933 A. L. J. 229=A. I. R. 1933 All. 366.

Power to order public examination of promoters, directors, etc.

196. (1) When an order has been made for winding up a company by the Court and the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company or has been a director, manager or other officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director, manager or other officer thereof.

(2) The official liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ such

take part in the examination

:ar before the Court.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court, being an official referee, master, registrar or deputy registrar, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

order the official receiver to pay the costs of the *iddle & Co.* (1910) 2 K. B. 697. A summons to -mination can be taken out as soon as the person to be examined knows of the order. *Stiebel* p. 1049 citing *Trust and Investment Corporation of South Africa* (1892) 3 Ch 322 Before public examination is ordered the official liquidator must make out a *prima facie* case of fraud. (1896) A. C. 146; (1893) 2 Q B 386, (1893) 1 Ch 210; (1899) 1 Ch 215 at p. 231. Such fraud must have been committed in the promotion or formation of a company. (1894) 1 Ch. 444 at p 447 But it is discretionary with the Court to order public examination of any person. (1899) 1 Ch. 218 at p 234; (1910) 2 K. B 67 at p 68 Such an order may be made by the Court *exparte.* (1892) 3 Ch 307 at p 318 But such order should be

delay in taking proceedings, such delay may in some cases be a defence to the respondent, if he has been injured by the delay, [*Mammow Copperpolis of Utah,* (1881) 50 L J. (Ch) 11; *Stienger's Case* (1869) 4 Ch. 425], but not, it is thought otherwise [*Alexandra Place Co,* (1882) 21 C. D. 149; *Re Sharpe* (1892) 1 Ch. 154] A summons may be taken out against any person liable or alleged to be liable, even where there are others who are not parties, equally liable with the person summoned. D. 335]"—Stiebel, p 1060 If the or management of the company is 3. A. I. R. 1931 Lah. 8 Particulars of fraud of person to be publicly examined must be given. But they need not be given with same particularity as in criminal charge. Mere general allegations are not

sufficient. 143 Ind. Cas. 482=55 A. 496=1933 A. L. J. 239=A. I. R. 1933 All. 366. Where the company has not passed an extraordinary resolution "to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up" as required by sub section (3), s. 203 and the notice calling the general meeting at which the question of liquidation was discussed did not specify the intention to propose the resolution as an extraordinary resolution the company is not in voluntary liquidation in accordance with the provisions of the Act, and the Court has no power to order the directors to be examined under s. 196. A. I. R. 1934, Rang. 271=7 R. R. 132=151 Ind. Cas. 987.

Clause (5).—Clause (5) was enacted in order to enable the Court in charge of the liquidation proceedings to examine the persons mentioned therein *inter alia* to ascertain their conduct with regard to the management of the company and to find out its financial condition and its assets. In these proceedings there is no contest between two parties and therefore the proviso to s. 132 of the Evidence Act does not confer any special privilege on the persons so examined. *Ram Chand Gurvala* v. *Emperor*, A I R 1926 Lah 385.

Clause (7).—The intention of the Legislature in using the words "in civil proceedings" in clause (7) was to make the statement admissible against the person examined unconditionally so far as civil proceedings are concerned and in criminal proceedings subject to the provisions of s 132, Evidence Act This section was not intended in any way to override the provisions of the Indian Evidence Act. *Ram Chand Gurvala* v *Emperor* A I R. 1926 Lah. 385

Power to arrest absconding contributory.

197. The Court, at any time either before or after making a winding up order on proof of probable cause for believing that a contributory is about to quit British India or otherwise to abscond, or to remove or conceal ...ding payment of calls or of avoiding ...ompany, may cause the contributory ... movable property to be seized, and him and them to be safely kept until such time as the Court may order

Saving of other proceedings.

198. Any powers by this Act conferred on the Court shall be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Notes.—*Vide* 46 P. R. 1915=29 Ind. Cas. 265

Enforcement of and Appeal from Orders.

Power to enforce orders.

199. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

... made to the High Court for directing the ... the payment orders made by another High ... of the company, the proper procedure as indi... filed should be treated in ... in which it is filed and transfe... concerned and it is not co... liquidator to apply to the District Courts concerned for enforcing the order under s. 164. A. I. R. 1927 Mad. 271.

Order made in any Court to be enforced by other Courts.

200. Any order made by a Court for or in the course of the winding up of a company shall be enforced in any place in British India other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

Notes.—Sections 200 and 201 must be held to be subject to the special provisions of R. 16 of O. 21 of the C. P. Code and therefore a transferee of an order under section 186 of the Companies Act must in the first instance, apply to the Court which made the order. *Tharya Ram v. Popat Ram*, 92 P. R 1918=163 P. W. R. 1918=47 Ind. Cas 997.

201. Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made; and thereupon the last-mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

Mode of dealing with orders to be enforced by other Courts

Notes—An order for the winding up of a company was made by the Punjab Chief Court, and under section 154 of the Companies Act subsequent proceedings were taken in the Court of the District Judge of Lahore against contributories residing in districts within the jurisdiction of Allahabad High Court by the Official Liqui- [illegible] enforce [illegible] al Liqui- [illegible] is again- [illegible] nience is in favour of the latter course, [illegible] ceed accordingly. *In the matter of the* [illegible] *Ltd*, 55 Ind Cas 384.

202. Rehearings of, and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decisions of the same Court in cases within its ordinary jurisdiction.

Appeals from orders.

Notes—An order of District Judge dismissing objections to attachment is not appealable. 1927 Lah. 282. Notice of an appeal from any order or decision [illegible] by the predecessor of the Judge, and consequently no appeal from such an order can be entertained. *Ghansham Das v Hindusthan Bank*, 1 Lah. 73=55 Ind Cas 928. [illegible] a wrong order and rectify a mistake. [illegible] en an order can be treated as an order [illegible] der of the liquidating Court can not [illegible] 45 Ind. Cas. 64 Appeal lies against order rejecting scheme under s. 153 140 Ind. Cas. 133=10 Rang. 438=A. I. R 1932 Rang. 154.

This section corresponds to section 169 of Act VI of 1882. For cases under that section *vide* 16 Ind Cas. 794; 22 Ind Cas 795; 73 Ind Cas 221; 10 Ind. Cas. 453; 29 Ind. Cas. 265; 63 Ind Cas 607; 28 Ind. Cas. 142; 28 Ind. Cas. 600; 31 Ind. Cas. 725; 11 Ind Cas 562; 55 Ind. Cas. 928, 19 Ind. Cas. 53; 22 Ind. Cas. 250; 17 Ind. Cas. 85; A. I. R. 1929 Lah 770 (F. B); 36 C. W N. 59; 33 Bom L R 1495; A. I. R. 1931 Sind 120; A. I. R. 1931 Lah. 8; A. I R. 1931 All. 59 (2).

Voluntary winding up.

Circumstances in which company may be wound up voluntarily

203. A company may be wound up voluntarily:—

(1) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in

general meeting has passed a resolution requiring the company to be wound up voluntarily;

(2) if the company resolves by special resolution that the company be wound up voluntarily;

(3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up

Notes—A company registered under this Act may be wound up voluntarily. *Torquay Bath Co*, In *re*, 32 Beav. 581. In order to render an extraordinary resolution for the voluntary winding up of a company valid, it is necessary that notice of the meeting should express that it is intended to propose a resolution that the company is unable by reason of its liabilities to continue its business *Silkstone Fall Colliery Co.* In *re* 1 Ch. D. 38; see also 2 Ch. 191 (1875) 1 Ch. D. 38; 15 C. W. N. 1047; 35 P. R. 1917; 38 Ind. Cas. 943. A resolution to wind up the affairs of a limited liability company voluntarily must be confirmed at a subsequent meeting of the shareholders; and such resolution is only effective from such confirmation. *Hornby's Case*, 19 L. T. 237. Where a company is wound up voluntarily by means of a preliminary and a confirmatory resolution the commencement dates from the passing of the second resolution. *Dawe's Case*, 37 L. J Ch. 901: see also *Hornby's Case*, 37 L. J. Ch 929. As to who are shareholders *vide* 46 Ind. Cas. 672=20 Bom. L R 692=42 Bom 595; 27 Ind Cas. 505. As regards liabilities of a shareholder as a contributory, *vide* 28 Ind. Cas. 95; 28 Ind. Cas. 142; 46 Ind. Cas 21.

Commencement of voluntary winding up.

204. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

Notes.—A voluntary winding up of a company is to be deemed to commence [illegible] on as defined by section 81, [illegible] resolution confirming the [illegible] after the passing of such a [illegible] us shares in the company: [illegible] itories. *Hornby's Case*, 37 L. J. 929; see also (1868) 6 Eq 232; (1868) 4 Ch App. 20; (1885) 31 Ch D. 78; (1897) 1 Ch 373; 25 Ch D. 118. Where a voluntary winding up is superseded by a compulsory order, the winding up dates from the presentation of the petition. *Taurine Co*, In *re*. 53 L. J Ch. 271=25 Ch. D. 118; (1910) 2 Ch. 78; 18 L T. 205

Effect of voluntary winding up on status of company.

205. When a company is wound up voluntarily, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Notes—The voluntary winding up does not operate as a notice of dismissal [illegible] h 357; [illegible] itor is an [illegible] itment of [illegible] general meeting or the liquidator sanctions the continuance thereof Ordinary trade contracts made previous to the liquidation are terminated (1902) 2 K B. 660; (1903) A. C. 414; (1882) 5 Q B. D. 149.

Notice of resolution to wind up voluntarily.

206. (1) Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the local official gazette, and also in some newspaper (if any) circulating in the district where the registered office of the company is situate.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.

Notes.—Where a company has resolved by special or extraordinary resolution to wind up voluntarily, it must give notice of the resolution by advertisement in the Gazette.—*Stiebel*, p. 1272.

Consequences of voluntarily winding up.

207. The following consequences shall ensue on the voluntary winding up of a company:—

(*i*) the assets of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company;

(*ii*) the company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them;

(*iii*) on the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof;

(*iv*) the liquidator may, without the sanction of the Court, exercise all powers by this Act given to the official liquidator in a winding up by the Court;

(*v*) the liquidator may exercise the powers of the Court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves;

(*vi*) the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(*vii*) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined by the company at the time of their appointment, or in default of such determination by any number not less than two;

(*viii*) if from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator; and

(*ix*) the Court may, on cause shown, remove a liquidator, and appoint another liquidator.

Notes.—If decree is passed against a bank after it goes into voluntary liquidation the High Court has the power to order stay of execution. One creditor must not be allowed to be given more than his share of the assets of the company. *National Bank of Upper India, Ltd.* v. *Lakhpat Rai.* 2 O. W. N. 508=A. I. R. 1925 Oudh 483. The power of the Court to remove a liquidator under clause 9 is not confined to cases of unfitness on the part of the liquidator, but also extends to cases where 'due cause' is shown which in its turn must be measured by the real interests of the liquidation. 80 Ind. Cas. 515; (1887) Ch. D 299. The provision that the assets of the company in voluntary liquidation shall be applied in satisfaction of its liabilities *pari passu* is intended for the guidance of the private liquidator. 35 C. W. N. 299. Where a company goes into a voluntary liquidation the Court generally stays execution of the decree obtained against the company 131 Ind. Cas. 379=A. I. R. 1931 Lah. 589. But dismissing the application for execution is not warranted. 58 C. 913=35 C. W. N. 299. After a company has gone into liquidation through a voluntary liquidation the remedy of a creditor is to take only what he can take under the scheme of the liquidation and no more. 118 Ind. Cas. 387. Clause (1) is not in itself a statutory

ny gone into volun-

om a Court having

stay of proceedings,

taken by a decree-

holder is entitled to move the Court having jurisdiction under the Companies Act.

36 Ind. Cas. 397=38 A. 407=14 A. L. J.
the right to commence or continue legal
565=58 C 913=35 C. W. N. 299=A. I
suits in absence of express prohibition. A. I. R. 1932 All. 342=1932 A. L. J. 354=54 A. 541

Notice by liquidator of his appointment.

208. (1) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the registrar a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Notes—Where a person is appointed a liquidator of any company however imperfect he may consider his appointment to t
acts as such, he must carry out the duties a
When a person accepts his appointment as
according to law ; and if he does not do so then
in the nature of a misunderstanding he will be liable to a penalty under this section. *Satish Chandra Ghosh* v. *Emperor*, 39 Ind Cas 478=15 A. L. J. 346=39 A. 412.

Rights of creditors in a voluntary winding up

209. (1) Every liquidator appointed by a company in a voluntary winding up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than twenty one days nor more than one month after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice
tte and once at least in some news-
the registered office or principal

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the Court for the appointment of any person as liquidator in the place of, or jointly with, the liquidator appointed by the company, and, if the creditors so resolve, an application may be made accordingly to the Court at any time not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting :

Provided that the Court may, by order at any time, extend the time for making an application under this sub-section for such period as the Court thinks proper.

of the company, may seem just.

(4) The Court shall make such order as to the costs of the application as it may think fit, and, if it is of o
creditors in the liquidation, t
may order the costs of the applic
pany, notwithstanding that the
adversely to the applicant.

Notes.—By an extraordinary resolution it was resolved that a company be wound up voluntarily and that a person A be appointed as liquidator. Subsequently at a meeting of the cre
appointed as joint
section 209 (2) for
were carried on jo
application to the

application under section 209(2) of the Act was made for the appointment of B as joint liquidator the assumption of the other of the office of joint liquidator by B does not give him any rights
ment with retrospective
section 209, clause (2)
order the recommendati
appointed joint liquidator. The Court may or may not act under clause (3) on the resolution of the creditor. *Bhagat Brother's Ltd*, In *re*. 41 C. L. J 521 = 88 Ind. Cas. 905.

210. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

Power to fill vacancy in office of liquidator

(2) For that purpose a general mee
or, if there were more liquidators than o
(3) The meeting shall be held in
such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Notes—*This section makes provision for the appointment of a successor to a* liquidator in case of his death, resignation or otherwise. 46 A. 759.

211. (1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

Delegation of authority to appoint liquidators.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

Notes—The power given by this provision is never exercised. *Stiebel*, p. 1274.

212. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

Arrangement when binding on creditors

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Notes.—Resolution passed on modification of composition scheme on application to Court if defective under mandatory section 212, will not be valid by doctrine of part performance. 1930 A. L J 1157

213. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company) the liquidator of the first mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interest in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares,

Power for liquidators to accept shares, etc, as a consideration for sale of property of company

(4) The registrar on the filing of the return shall forthwith register it, and, on the expiration of three months from the registration of the return, the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under sub-section (4) is made, within twenty one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

order can be made against a company. (1879) 11 C. D. 140 ; (1888) W. N. 70. Pin ... Tin... and Cas. 747=13 Lah. 190=33 P. L. R. 429=A. I. R. ... dator, like Official Receiver appointed in insolvency ... and has got definite powers conferred upon him under Art 7 of 1913 and as such he is a public servant within the meaning of the term and to such a public officer notice under s. 80 is necessary. A. I. R 1934 Oudh 158=11 O. W. N. 398=148 Ind. Cas. 448.

218. All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims at the date of the winding up.

Cost of voluntary liquidation.

Costs.—In case of deficiency of assets the voluntary liquidators are not personally liable for acts. (1872) 14 Eq 278 The d ... priority in the same way as in compulsory windir ... *tion Co.*, (1885) 28 C. D. 474], and where p ... brought, defended or continued by a liquidator, ... ed to pay will have priority and be payable immediately, just as in compulsory liquidation *Stiebel*, p. 1277 citing *Wenborn & Co.*, (1905) 1 Ch. 413 ; *London Drapery Stores*, (1898) 2 Ch 614 ; *Exparte Smith*, (1867) 3 Ch. 125 ; *Bailey and Leetham's Case*, (1869) 8 Eq 94 ; but see (1889) 42 C. D. 486 ; (1893) W. N. 37.

219. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, if the Court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

Saving for rights of creditors and contributories.

Notes.—An application for winding up a company was filed in Court, but before ... by a resolution of shareholders the company ...

(1871) 12 Eq 26 ; (1874) 22 W. R. 675 ; 34 Beav. 314. Whether liquidation should be allowed to be voluntary or be made compulsory by Court depends on the facts of each case. 119 Ind. Cas. 539=A. I. R. 1930 Sind 71.

Power of Court to adopt proceedings of voluntary winding up.

220. Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

Scope.—This section does not enable the Court to provide that a compulsory liquidation shall commence at the time when a previous voluntary winding up commenced But the Court can adopt the list of contributories prepared at the voluntary liquidation. *Taurine Co*, (1883) 25 C. D. 118

Winding up subject to supervision of Court.

Power to order winding up subject to supervision.

221. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

Notes.—According to *Vaughan Williams J.* this form of liquidation is the best form of liquidation. (1894) 1 Mans. 349 The Court cannot exercise jurisdiction ... tings which passed such reso- ... 2 Ch. 191; *Patent Floor Cloth Co*, (1887) W. N. 218. The ... ntation of the petition (1883) 31 W. R. 238; (1891) 64 L T. 658; (1894) 1 Ch 444 But an order under this section is bad where there is no resolution or the resolution is defective. 24 C. D. 481. A winding up order can only be set aside if the applicant alleges and proves fraud. 29 M. L W 72=A. I R. (1928) P. C 261. Court will confirm transaction made between dates of presentation of petition and winding up order if made in ordinary course of business A. I R 1930, Mad. 1012=59 M L. J 826=129 Ind Cas 40.

Effect of petition for winding up subject to supervision.

222. A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

Notes.—The object of this section is that all unsecured creditors are to be paid *pari passu*. 32 Bom L. R 953=54 B. 718=127 Ind. Cas. 82.

Court may have regard to wishes of creditors and contributories.

223. The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Notes.— ... cumstances ... refusing a su... *lois Wine Co*, (1867) 3 Ch 15.

Power for Court to appoint or remove liquidators.

224. (1) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

(4) The registrar on the filing of the return shall forthwith register it, and, on the expiration of three months from the registration of the return, the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under sub section (4) is made, within twenty one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Cas 747=13 Lah. 190=33 P. L. R. 429=A. I. R. 1931 Lah. 500. The official liquidator, like Official Receiver appointed in insolvency cases, is an official of the Court and has got definite powers conferred upon him under Art 7 of 1913 and as such he is a public servant within the meaning of the term and to such a public officer notice under s 80 is necessary. A. I R. 1934 Oudh 158=11 O. W. N. 398=148 Ind. Cas. 448.

218. All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims at the date of the winding up.

Cost of voluntary liquidation.

Costs—In case of deficiency of assets the voluntary liquidators are not person-

pery Stores, (1898) 2 Ch 614 ; *Exparte Smith*, (1867) 3 Ch. 125 ; *Bailey and Leetham's Case*, (1869) 8 Eq 94 ; but see (1889) 42 C. D. 486 ; (1893) W. N. 37.

219. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, if the Court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that . be prejudiced by a voluntary winding up.

Saving for rights of creditors and contributories.

story winding up must be dismissed *Sancar Chand*, v. *Karam Chand*, 89 Ind. Cas. 613 ; see also *New York Exchange Co.* (1888) 39 C. D. 415 ; *Medical Buttery Co.* (1894) 1 Ch. 444. In *Gold Co*, (1879) 11 C D. 701 at p. 717. *Baggallay L J.* suggests that the Court will make a compulsory order more easily where at the date of the petition there is no effectual winding up In such a case the English ; winding up and any creditor, or the contributory In such a case, the *Cf.* (1879) W. N. 136 ; (1887) 19 Q. B. D. 394 ; (1904) 1 K. B. 295 ; (1905) 1 Ch 677.

A petitioner is to show only that he will be prejudiced by voluntary liquidation. (1901) 1 Ch. 102 at p. 109 But where the majority of the creditors are in favour of voluntary liquidation the Court will be slow to make an order. (1875) 10 Ch. 618 ; (1871) 12 Eq. 26 ; (1874) 22 W. R. 675 ; 31 Beav. 314. Whether liquidation should be allowed to be voluntary or be made compulsory by Court depends on the facts of each case. 119 Ind. Cas. 539=A. I. R. 1930 Sind 71.

220. Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

Power of Court to adopt proceedings of voluntary winding up.

Scope.—This section does not enable the Court to provide that a compulsory liquidation shall commence at the time when a previous voluntary winding up commenced. But the Court can adopt the list of contributories prepared at the voluntary liquidation. *Taurine Co*, (1883) 25 C. D. 118.

Winding up subject to supervision of Court.

221. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

Power to order winding up subject to supervision.

Notes—According to *Vaughan Williams J.* this form of liquidation is the best form of liquidation. (1894) 1 Mans. 349 The Court cannot exercise jurisdiction under this section where notices summoning the meetings which passed such resolutions were bad *Bridport Old Brewery Co.* (1867) 2 Ch. 191 ; *Patent Floor Cloth Co.* (1869) 8 Eq. 664 ; *Sheffield Mortgage and Estates Co.*, (1887) W. N. 218. The extraordinary resolution may be passed after the presentation of the petition (1883) 31 W. R. 238 ; (1891) 64 L T. 658 ; (1894) 1 Ch 444 But an order under this section is bad where there is no resolution or the resolution is defective. 24 C. D. 481. A winding up order can only be set aside if the applicant alleges and proves fraud. 29 M. L. W. 72=A. I R (1928) P C 261. Court will confirm transaction made between dates of presentation of petition and winding up order if made in ordinary course of business A I. R. 1930, Mad 1012=59 M L. J. 826=129 Ind. Cas 40.

222. A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court

Effect of petition for winding up subject to supervision.

Notes.—The object of this section is that all unsecured creditors are to be paid *pari passu.* 32 Bom L. R. 953=54 B. 718=127 Ind. Cas. 82.

223. The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Court may have regard to wishes of creditors and contributories.

Notes.—This section contains the provision which in any way indicates the circumstances which are to guide the Court in exercising its discretion as to granting or refusing a supervision order. *Bank of Gibralter and Malta*, (1865) 1 Ch. 69 *Beaujolois Wine Co*, (1867) 3 Ch. 15.

Power for Court to appoint or remove liquidators.

224. (1) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The Court may remove any liquidator so appointed by the C[illegible] any liquidator continued under the supervision order, and fill any v[illegible] occasioned by the removal, or by death or resignation.

Notes — United
Marthyr Co But no
absolute discr D. 177.
But the Court original
Court. *Armston Grange Steamship Co.*, (1901) 17 T. L. R. 533; *Exparte Spearg* (1880) 16 C. D. 107; *Exparte Newitt*, (1885) 14 Q. B. D. 177.

225. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

Effect of supervision order.

(2) Except as pr
section 196, any order
vision of the Court shall
proceedings, be deemed to be an order of the Court for winding up of the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up of the company altogether by the Court.

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

Notes.—The commencement of the voluntary liquidation is from the time of the passing of the special resolution. *Hornby's Case*, (1868) 37 L. J. Ch. 929; *Daw's Case*, (1868) 6 Eq. 232. This is also the time when a voluntary liquidation under supervision commences even where a petition has been presented and a provisional liquidator has been appointed at an earlier date. Stiebel, p. 1264 citing (1889) 40 C. D. 361; (1888) 39 C. D 306; (1885) 31 C. D 78; (1868) 3 Ch 20; (1870) 11 Eq. 478; (1868) 6 Eq. 496. Appeal is competent from orders passed in winding up proceedings under supervision of Court. A. I. R. 1935 Lah 174.

226. Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court.

Appointment in certain cases of voluntary liquidators to office of official liquidators.

Notes.—The Court can make a compulsory order after it has made a supervision
diterranean Bank (1866) 15 L. T. 153;
106; *United Service Co.*, (1868) 7 Eq.
3 Ch. 563. In such a case the Court
. *Bristol Victoria Potteries Co.* (1873)
20 W. R. 569.

Supplemental Provisions.

227. (1) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up shall be void.

Avoidance of transfers, etc., after commencement of winding up.

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

Notse.—If there be several transfers sanctioned by the Liquidator under this section all the transferors will be placed in the B list of contributories (1897) 1 Ch. 298. When such transfer is void under clause (2) the validity of the transfer as between the parties is not affected (1867) 2 C. P. 228, 3 Q. B. 689. After winding up order is made company cannot enter into contracts or make payments without Court's sanction, but section 227 (2) does not in terms apply to contract for purchase of course which, if made honestly and in the ordinary course of business, may be sanctioned by Court. 129 Ind. Cas 40=A. I. R 1930 Mad. 1012. Under sub-section (2) Courts should ... fere in appropriate cas... Bom. 718=32 Bom. L ... petition by some sharel... appeal granted lease for ten years the lease should not be declared void, where com... appellate Court in the meantime passed the ... =34 Bom. L. R. 321=36 C. W N. 54=58 I. ... 5 (P. C). Petitioning creditor cannot utilize ... to himself. A. I R 1931 Bom 2=32 Bom. L. R. 953=54 B 718. Sub section (2) intends to prevent improper alienation of property of company prior to winding up petition. *Ibid.* The plain reading of section 227 (2) means that it is within the jurisdiction of the court at any time after the transfer ... ction is a good transaction and shall stand. ... es without previous sanction should be void. ... properly left, to the Court to do whatever ... t. Such an order however although it would ... ordinarily be made without grounds for making it. A. I R. 1934 All. 161=1934 A. L. J 195=148 Ind. Cas 498.

228. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of insolvency) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, shall be admissible to proof against the company, a just estimate being made, so far as possible, c the value of such debts or claims as may be subject to any contingency or fo some other reason do not bear a certain value.

Debts of all descriptions to be proved.

...panies which are in a position to pa... ...iding up. *Gore Buorne*, p. 514. ... y or by the order of the Court o... 477. Interest payable after date c... ... debt provable. 133 Ind. Cas. 238=9 Rang. 318=A. I. R. 193... Rang. 334.

229. In the winding up of an insolvent company the same rules shal prevail and be observed with regard to the res pective rights of secured and unsecured creditor and to debts provable and to the valuation o annuities and future and contingent liabilities a are in force for the time being under the law of insolvency with respect to th estates of persons adjudged insolvent ; and all persons who in any such cas would be entitled to prove for and receive dividends out of the assets of th company may come in under the winding up, and make such claims against th company as they respectively are entitled to by virtue of this section.

Application of insolvency rules in winding up of insolvent companies.

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can be applied. 45 B. 1219. A company which cannot pay up its debts is to be considered as insolvent, *Exparte Theys*, (1884) 25 Ch. D. 587; (1902) A. C. 187 at p. 192; (1922) 2 Ch. 369 at p. 402.

In considering whether a company is insolvent the interest on debt upto the date of payment is also to be calculated. *Re Whitaker*, (1904) 1 Ch. 299. A solvent company must also be in a position to pay the cost of liquidation as well. *Re. Lang* (1895) 1 Ch. 652. But where the company is insolvent, interests stop at the date of commencement of winding up. (1869) 4 Ch. App. 643; (1881) 17 Ch. D. 334; (1872) 13 Eq. 623: (1892) 1 Ch. 639 This section makes the rules of bankruptcy applicable as far as may be. Where however there is conflict between the Indian Companies Act and the Insolvency Act the provisions of the former Act must be given effect to. 134 Ind. Cas. 200=A. I. R. 1931 Lab. 351. This section is applicable only to insolvent companies. A company which turns out to be insolvent on winding up is not an insolvent company and creditors are entitled to interest from commencement of winding up at contract rate. A. I. R. 1931 Rang. 334=133 Ind. Cas. 238. A secured creditor can stand wholly outside the winding up proceedings if he so elects and realise upon his security or his decree, provided he has obtained leave to proceed [illegible] The priority of payment [illegible] 230 A. I. R. 1927 B. 606 [illegible] 's solvency, *vide*, 129 Ind. [illegible] 122 Ind. Cas. 836=A. I. R. 1930 Bom 16 As regards the right of a secured creditor, *vide* 120 Ind. Cas. 702. Reference to "some rules" in the section as in the insolvency in s. 229 is wide and includes not rules in section of the Insolvency Act but also under power conferred by the Act and also rules of practice. 119 Ind Cas. 273. Where assessment of income-tax has been made on estimated income before accounts are audited and it is claimed as debt from liquidator, the official liquidator can call proof of debt. A. I. R. 1935 Oudh 451

Preferential payments.

230. (1) In a winding up there shall be paid in priority to all other debts—

(*a*) all revenue, taxes, cesses and rates, whether payable to the Crown or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date;

(*b*) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant; and

(*c*) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece work, in respect of services rendered to the company within the two months next before the said date.

(2) The foregoing debts shall—

(*a*) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion; and

(*b*) so far as the assets of the company [illegible] creditors are insufficient to meet them, have pr[illegible] of debentures under any floating charge creat[illegible] accordingly out of any property comprised in [illegible]

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge, the landlord or other persons shall have the same rights of priority as the person to whom the payment is made.

(5) The date hereinbefore in this section referred to is—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and

(*b*) in any other case, the date of the commencement of the winding up.

Notes—S 230 supersedes Provincial Insolvency Act, (1920). S. 61. 134 Ind. Cas. 200=32 P. L. R. 367=12 Lah. 678=A. I R. 1931 Lah 351; see also A. I. R. 1932

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winding up. The winding up may be commenced as voluntary and continued as

g up commences when the resolution for the

R 1934 All 114=1934 A L. J. 476=147 Ind.

company took an advance of certain amount

repay it after the expiry of the term of his

in the purchase of a mill and the rest

Subsequently the company went into

he employee that if the company went

e position of a preferential creditor.

Held that the employee had no charge over the mill: nor was the employee one of the persons who was entitled to preferential treatment under this section. *Annapurna Co. Ltd, In the matter of*, 24 A. L. J. 347=93 Ind. Cas 93=A. I. R. (1926) All. 307. The word "revenue" is not necessarily *ejusdem generis* with words that

I. R. 1930 All. 884.

erty and assets subsequently passed

winding up. Between the date of the mortgage and the commencement of the winding up the company made no profits, but paid three several sums by way of interest on the mortgage less income-tax. The company never paid over or accounted for such deduction of tax to the Inland Revenue Commissioners. On an originating summons taken to determine whether the Crown was entitled under section 209 (1) of the Companies (Consolidation) Act, 1908 (=this Act) to recover one of the sums so deducted for tax in priority to all other creditors or *paripassu* with other creditors who were preferential, *Eve, J., held* that the Crown was not entitled to any such priority. On appeal: *Held* that in as much as such deductions could not be said to answer the description of tax assessed on the Company within s. 202 (1) of the Companies (Consolidation) Act, 1908, the Crown could not be treated as having any preferential rights over other creditors in respect thereof, and there was nothing in the language of the sub-section giving any priority to the debt. *Re Lang Propeller, Ltd*, (1927) 1 Ch 120.

231. (1) Any transfer, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a com-

Fraudulent preference.

ence of

wind-

court,

voluntary winding up, shall be

y in the case of an individual.

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

Notes—When a transaction is sought to be impeached under this section of the Companies Act as a fraudulent preference, it can be done only on behalf of the general body of the creditors, therefore a person who is not a creditor of a company but is a debtor cannot impeach a transfer made by the company on the ground of undue preference. 59 Ind. Cas 977=2 Lah. 102. To constitute a fraudulent preference three conditions must be fulfilled: first, that the payment is made by a person unable to pay his debts as they become due from his own

fers one creditor over others, and thirdly, that

payment was made was a desire to prefer that

made. If a voluntary payment in fact gives a

it is only reasonable that the powers of a liquidator under this section should extend to those sections only regarding which it can be shown that there is a subsisting right or liability. No new right is created by this section but a summary mode of enforcing rights is provided by it. 71 Ind. Cas. 899=1923 Lah. 52 (2) on appeal from 69 Ind. Cas. 255. This section is not applicable to recover rent due from a director who rented company's premises in his private capacity 85 Ind. Cas. 126. A managing director occupies the position of a trustee for the company and he is bound to exercise his powers for the benefit of the company and for that alone. 41 C. L. J 443=88 Ind. Cas 672. The directors are liable where they fail to supervise and control the acts of the manager. 88 Ind. Cas. 785. The mere fact that the directors allow advances to be made on the strength of a promise to execute a mortgage instead of the mortgage itself does not amount to an act of misfeasance so as to make them personally liable to the extent of the advance made. Facts which show imprudence in exercise of powers conferred upon the directors will not subject them to personal responsibility, the imprudence must be so great and manifest as to amount to gross negligence. 2 O. W. N. 920. The object of this section is to facilitate the recovery by the liquidator of assets of a company improperly dealt with by its promoters, directors or other officers 5 Lah. 461. Depositors are not creditors. 133 Ind. Cas. 360=1931 Mad. 370. This section is copied from an English

time A I R. 1929 Lah 710=119 Ind Cas. 429 Direct rs can claim reasonable costs *bona fide* incurred by them for company in an unsuccessful appeal against an

r as to costs. 117 Ind. Cas.

and allo'ment money not

tment are guilty of misfeas-

erate fraud in the floatation of the company and the conduct of its business is guilty of misfeasance. For a wilful contravention of the provisions of section 101 the directors are guilty of misfeasance and also liable to pay compensation to the company under s. 102 (2). Under s. 235 they are liable to discharge every creditor of the company as well as to return to the shareholders the money paid for their shares. Such payments would be contribution to the assets of the company which by way of compensation the Court thinks just within the meaning of s 235 A I R 1934 All. 855=4 A. W. R. 132. In order to saddle the directors with liability the Court should be satisfied that the

s caused a loss to the company.

ecisions. 1933 A. L. J 1203=A.

under this section is not "suit

Hence security for cost can

under the section is not independent of contract. A I. R. 1933 Sind 103. Winding up order does not give right to liquidator to enforce time-barred claim 128 Ind Cas 477=54 M. 153=60 M. L. J. 280= A. I. R. 1932 Mad. 58. Proceedings under this section are domestic proceedings. Orders passed thereunder do not bar suit against third party A. I . 1935 All. 99.

Penalty for falsification of books.

236. If any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books, papers or securities, or makes, or is privy to the making of any false or fraudulent entry in any register book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Notes.—Prosecution under this section is sought at the expense of the company. Stiebel, p. 1078.

237. (1) If it appears to the Court in the course of a winding up by or subject to the supervision of the Court that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding up, or of its own motion, direct the official liquidator or the liquidator (as the case may be) to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

Prosecution of delinquent directors, etc.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Notes.—Proceedings
summons. The applicatio
31 W. R. 546; *Charles 1*
don and Globe Finance Co
Court of its own motion
urt may direct notice of the application to
The Court may of its own motion direct
of the assets, but it will not as a rule act
or its own motion ... the assets of the
C ... 03) 72 L. J. Ch.
3 ... of the creditors.
8 ... been convicted
in his personal capacity of the offence is no reason why he should not be convicted of the same offence, also in his capacity as a partner of the firm which acted as the managing agents of the company *Tota Ram* v *The Crown*, 18 P. R. 1926 Cr. = 143 P. L. R 1196 = 17 Cr L J 306 = 35 Ind Cas 482.

238. If any person, upon any examination upon oath authorised under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Penalty for false evidence.

Notes —This section corresponds to section 218 of the English Companies Act, which section was repealed by section 1 of the Perjury Act of 1911. Section 1 of the English Perjury Act runs as follows: "If any person on examination on oath authorised under this Act or in any affidavit or deposition in or about the winding up of a company or otherwise in or about any matter arising under this Act wilfully and corruptly gives evidence, he will be liable to the penalties for wilful perjury."

239. (1) Where by this Act the Court is authorised in relation to winding up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

Meetings to ascertain wishes of creditors or contributories

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles

Notes —Under this section the Court can give directions as to the manner in which the meetings are to be held (1893) 3 Ch. 385; (1893) W. N. 128. It is usual

to order a particular form of proxy to be used. (1896) W. N. 56. This section refers to sections 174 and 223. 49 C 399 at p. 423, 424. Under this section the Court's power is unlimited as regards the ordering of meeting of creditors or contributories. 1 Ch. 735; 49 C. 399.

Documents of company to be evidence.

240. Where any company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Notes —A person who is admitted by a contributory for some shares will often be in a more difficult position than he would otherwise have been when trying to repudiate other shares. *Exparte Kennedy* (1890) 44 Ch. 472. The section is not, however, brought into play by the mere fact of a person's name being on the register. *Fox's Case*, (1863) 3 De. G. J. & S. 465 at p. 468—Stiebel p. 1101.

Inspection of documents.

241. After an order for a winding up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Notes —The right of inspection given by various sections as well as by articles of associations are taken away by this section. *Yorkshire Fibre Co*, (1870) 9 Eq.

expense (1901) 2 Ch 561; (1904) W. N. 73; (1866) 15 L. T. 261. A person inspecting may take copies. (1899) W. N. 134

Disposal of documents of company.

242. (1) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say):—

(*a*) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;

(*b*) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

(2) After three years from the dissolution of the company, no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

Notes.—If after dissolution the books are in possession of the liquidator and as regards which he has received no instruction, he may be ordered by the Court to produce them on an application for discovery and he cannot claim protection on the ground that he holds them on behalf of some one else. *London and Yorkshire Bank* v. *Cooper*, (1885) 15 Q. B. D. 473.

Power of Court to declare dissolution of company void.

243. (1) Where a company has been dissolved, the Court may, at any time within two years of the date of the dissolution on an application being made for the purpose by the liquidator of the company or by any other person ... ns as ... upon ... not

been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Notes.—Where the application made on the ground that there are undistributed assets, a notice should be served on the Crown *Henderson's Nigal,* (1911) 105 L. T. 370. The dissolution of a company does not debar the liquidator from taking action in respect of assets realised after dissolution of the company. *Mathra Das* v *Abdul,* ... of this Act a liquidator was ... aid with his knowledge and ... *Pulsford* v. *Dennish,* (1903) ... personally liable for debts in such a case, after the expiry of two years mentioned in the section

Information as to pending liquidations

244. (1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, file with the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement and to receive a copy thereof or extract therefrom ; bı
a creditor or contributory shall
tion 182 of the Indian Penal Co
application of the liquidator.

(3) If a liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues.

Notes—This section applies to a voluntary winding up as well as to compulsory winding up (1894) 1 Ch 736.

Court or person before whom affidavit may be sworn.

245. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in British India, or elsewhere within the dominions of His Majesty, before any Court, Judge or person lawfully authorised to take and receive affidavits, or in any part of India other than British India before any Court authorised or continued by the Governor General in Council, or in any place outside His Majesty's dominions before any of His Majesty's Consuls or Vice Consuls.

(2) All Courts, Judges, Justices, Commissioners and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

Rules.

Power of High Court to make rules

246. (1) The High Court may, from time to time, make rules consistent with this Act and with the Code of Civil Procedure, 1908,† concerning the mode of proceedings to be had for winding up a company in such Court and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-divisions of the shares of a company, "and shall make rules providing for all matters

* Act XLV of 1860. † Act V of 1908.

to order a particular form of proxy ... on refers to sections 174 and 223. 49 C. 39 ... Court's power is unlimited as regards the ... butories. 1 Ch. 735 ; 49 C. 399.

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Notes.—The right of inspection given by various sections as well as by articles of associations are taken away by this section. *Yorkshire Fibre Co*, (1870) 9 Eq.

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(*a*) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs ;

(*b*) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

ing to any person claiming to be interested therein

books are in possession of the liquidator and as nstruction, he may be ordered by the Court to pro- iscovery and he cannot claim protection on the behalf of some one else. *London and Yorkshire* . 473.

243. (1) Where a company has been dissolved, the Court may, at any time within two years of the date of the dissolution on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

Power of Court to declare dissolution of company void.

its name off the register, and shall publish notice thereof in the local official Gazette, and, on the publication in the local official Gazette of this notice, the company shall be dissolved : Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or member or creditor, may, if satisfied that the company was at the the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off ; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director, manager or other officer of the company, or, if there is no director, manager or other officer of the company whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Notes.—A company does not become defunct when the number of shareholders becomes less than seven 86 Ind. Cas 652. The words of this section are not mandatory, but only directory. *Ibid.* The fact that a company's name has been struck off the register under this section is no bar to a compulsory winding up order being made. (1898) 1 Ch. 100 ; (1902) 71 L J. Ch 748. The fact that a company is in compulsory [27 Sol. J 199 ; 27 Sol J 585 ; (1901) W. N. 46] or voluntary liquidation (34 Ch. D. 479) will not prevent the name of the company being restored to the register under the section but the Court will not make an order for this purpose unless it is shown that some good may accrue by the order going, *e g*, that debts can be got in or that the company will be enabled to carry on its business and that the company [illegible] 21 [illegible] of [illegible] is [illegible] es [illegible] is [illegible] ry-ing on business, or that its members have been reduced to less than 7 even though an application for removing them is made 26 P. L R. 68=A I. R 1925 Lah 443=86 Ind. Cas 652. A company can be wound up even after it has been dissolved, with this difference that in the case of a defunct company it can be done on the application of an erstwhile shareholder. 109 Ind Cas. 559=A. I. R. 1928 Nag. 194. The only person who can legally put in an appearance on behalf of company in proceedings under s. 247(6) on the application of a shareholder is either secretary of the company or one of its directors though they may not be parties to original proceedings The registrar can not represent the companies 116 Ind Cas. 427.

PART VI.

Registration Office and Fees.

248. (1) For the purposes of the registration of companies under this Act, there shall be offices at such places as the Local Government thinks fit, and no company shall be registered except at an office within the province in which, by the memorandum, the registered office of the company is declared to be established.

Registration offices.

(2) The Local Government may appoint such registrars and assistant regis-

trars as it thinks necessary for the registration of companies under this Act, and

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der this section shall be fixed by

(4) The Local Government may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(5) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the Local Government, not exceeding one rupee for each inspection ; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar on payment for the certificate, certified copy or extract, of such fees as the Local Government may appoint, not exceeding three rupees for a certificate of incorporation, and not exceeding six annas for every hundred words or fractional part thereof required to be copied.

(6) Whenever any act is by this Act directed to be done to or by the registrar it shall, until the Local Government otherwise directs, be done to or by the existing registrar of joint stock companies or in his absence to or by such person as the Local Government may for the time being authorise ; but, in the event of the Local Government altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Local Government may appoint.

Fees.

249. (1) There shall be paid to the registrar in respect of the several matters mentioned in Table B in the First Schedule the several fees therein specified, or such smaller fees as the Governor General in Council may direct.

(2) All fees paid to the registrar in pursuance of this Act shall be accounted for to the Crown.

PART VII.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

Application of Act to companies formed under former Companies Acts

250. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares ; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee ; and, in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company :

Provided that—

(1) nothing in Table A in the First Schedule shall apply to a company formed and registered under Act XIX of 1857 and Act VII of 1860, or either of them, or under the Indian Companies Act, 1866, * or the Indian Companies Act, 1882. †

(2) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under Act No. XIX of 1857 and Act No. VII of 1860, or either of them, or under the Indian Companies Act, 1866, or the Indian Companies Act, 1882, as the case may be.

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*Act X of 1866. † Act VI of 1882.

Application of Act to companies registered but not formed under former Companies Acts.

251. This Act shall apply to every company registered but not formed under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, or under the Indian Companies Act, 1866, * or the Indian Companies Act, 1882,† in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act :

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the said Acts or any of them

Mode of transferring.

252. A company registered under Act XIX of 1857 and Act VII of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct.

PART VIII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

Companies capable of being registered.

253. (1) With the exceptions and subject to the provisions mentioned and contained in this section,—

(*i*) any company consisting of seven or more members, which was in existence on the first day of May eighteen hundred and eighty-two, including any company registered under Act No XIX of 1857 and Act No. VII of 1860 or either of them, and

(*ii*) any company formed after the date aforesaid whether before or after the commencement of this Act, in pursuance of any Act of Parliament or Act of the Governor General in Council other than this Act, or of Letters Patent, or being otherwise duly constituted according to law, and consisting of seven or more members ;

may at any time register under this Act as an unlimited company or as a company limited by shares, or as a company limited by guarantee, and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up :

(2) Provided as follows :—

(*a*) a company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council or by Letters Patent, and not being a joint-stock company as hereinafter defined, shall not register in pursuance of this section ;

(*b*) a company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council or by Letters Patent shall

tion as an unlimited company or as a com-

joint-stock company as hereinafter defined

s section as a company limited by shares ;

(*d*) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose ;

(*e*) where a company not having the liability of its members limited by Act of Parliament or Act of the Governor General in Council or by Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting ;

(*f*) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a

* Act X of 1866. † Act VI of 1882.

resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(3) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the articles.

(4) A company registered under the Indian Companies Act, 1882,* shall not be registered in pursuance of this section.

Duly constituted according to law.—A partnership consisting of seven or more members is not a company "otherwise duly constituted by law" so as to be capable of registration under this section. *Reg* v. *Registrar of Joint-Stock Companies*, (1891) 2 Q. B 508 ; *Cussons, Ltd*, (1994) 73 L. J Ch. 296 ; see also (1920), Ch. 201.

Sub-section (3)—In cases not provided for by the Articles of Association the majority will be ascertained by a show of hands. *Ernest* v. *Homa Gold Mines*, (1897) 1 Ch. 1 ; *Harbury Bridge Co*, (1897) 11 C. D. 109.

Sub-section (4)—A Foreign corporation cannot be registered. *Bulkely* v. *Schutz*, L. R. 3 C P. 768 ; *Beteman* v. *Service*, (1881) 6 A. C. 386.

Definition of "joint-stock company."

254. For the purposes of this Part as far as relates to registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons ; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

Requirements for registration by joint-stock companies.

255. Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the registrar the following documents (that is to say) :—

(1) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number ,

(2) a copy of any Act of Parliament, Act of the Governor General in Council, Royal Charter, Letters Patent, deed of settlement, contract of copartnery or other instrument constituting or regulating the company ; and

into which it is divided or the amount of stock of which it consists ;

(*b*) the number of shares taken and the amount paid on each share ;

(*c*) the name of the company, with the addition of the word "Limited" as the last word thereof ; and

(*d*) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Requirements for registration by other than joint stock companies.

256. Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the registrar—

* Act VI of 1882.

(1) a list showing the names, addresses and occupations of the directors of the company; and

(2) a copy of any Act of Parliament, Act of the Governor General in Council, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company; and

(3) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Authentication of statement of existing companies.

257. The list of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

258. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as hereinbefore defined.

On registration of banking company with limited liability, notice to be given to customers.

259. (1) Where a banking company, which was in existence on the first day of May eighteen hundred and eighty two, proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain companies from payment of fees.

260. No fees shall be charged in respect of the registration in pursuance of this Part of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some Act of Parliament or Act of the Governor General in Council or by Letters Patent.

Addition of "Limited" to name.

261. When a company registers in pursuance of this Part with limited liability, the word "Limited" shall form and be registered as part of its name.

Certificate of registration of existing companies.

262. On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal

Vesting of property on registration.

263. All property, movable and immovable, including all interests and rights in, to and out of property, movable and immovable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving of existing liabilities.

264. The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation of existing suits.

265. All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

Effect of registration under Act.

266. When a company is registered in pursuance of this Part,—

(*i*) all provisions contained in any Act of Parliament, Act of the Governor General in Co[illegible] Patent, or other ins[illegible] in the case of a [illegible] resolution declaring [illegible] tions, and regulations of the company, in the same manner and with the same incidence as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, where contained in a registered memorandum, and the residue thereof were contained in registered articles.

(*ii*) all the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—

(*a*) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution;

(*b*) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered;

(*c*) subject to the provisions of this section, the company shall not have power to alter any provisions contained in any Act of Parliament or Act of the Governor General in Council relating to the company;

(*d*) subject to the provisions of this section, the company shall not have power, without the sanction of the Governor General in Council, to alter any provision contained in any Letters Patent relating to the company;

(*e*) the company shall not have power to alter any provision contained in a Royal Charter or Letters Patent with respect to the objects of the company;

(*f*) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid: and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from [illegible] as aforesaid; and in the event of the deat[illegible] the provisions of this Act with respect [illegible]

of deceased contributories, and with reference to the assigness of insolvent contributories, shall apply ;

(*iii*) the provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited ;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its sharecapital and to provide that a portion of its sharecapital shall not be capable of being called up except in the event of winding up ;

(*c*) the power of a limited company to determine that a portion of its sharecapital shall not be capable of being called up except in the event of winding up ;

shall apply notwithstanding any provisions contained in any Act of Parliament, Act of the Governor General in Council, Royal Charter, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company ;

(*iv*) nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co partnery, Letters Patent or other instrument constituting or regulating the company, as would if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorized to be altered by this Act ;

(*v*) nothing in this Act shall derogate from any lawful power of altering its constitution or regulations which may, by virtue of any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, be vested in the company.

Power to substitute memorandum and articles for deed of settlement.

267. (1) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section with the following modifications :—

(*a*) there shall be substituted for the printed copy of the altered memorandum required to be filed with the registrar a printed copy of the substituted memorandum and articles , and

(*b*) on the registration of the alteration being certified by the registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company, not

Royal Exchange Buildings,

Power of Court to stay or restrain proceedings.

268. The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up

order shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

Suits stayed on winding up order.

269. Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

Notes—The dismissal of a suit against a registered company after the company went into liquidation is no bar to the maintainance of the claim before the official liquidator. *Pearylal* v. *W. K. Porter*, 24 Ind. Cas. 99.

PART IX.

WINDING UP OF UNREGISTERED COMPANIES.

Meaning of "unregistered company."

270. For the purposes of this Part, the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament or by an Act of the Governor General in Council, nor a company registered under the Indian Companies Act, 1866* or under any Act repealed thereby, or under the Indian Companies Act 1882, † or under this Act, but, save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

Includes.—The companies at the date of petition should consist of more than seven members. *Bolton Benefit Loan Society*, (1879) 12 C. D. 679. In *New York and Continental Line*, (1909) 54 Sol J. 117 it was suggested by *Eddy J.* that under the English Companies (Consolidation) Act, 1908, it was not necessary for an unregistered company to have more than seven members in order to enable it to be wound up. It will be observed that this section merely "includes" the companies herein named under the expression "unregistered companies," *Vide* Stiebel, p. 782. In a proper case Court can order winding up of a partnership, association or company under this section, if and only if it consists of more than seven members on the date of the presentation of petition. A. I. R. 1931 Rang. 77.

Winding up of unregistered companies.

271. (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions :—

(*i*) an unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in the province where its principal place of business is situate or, if it has a principal place of business situate in more than one province, then in each province where it has a principal place of business ; and the principal place of business situate in that province in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company ;

(*ii*) no unregistered company shall be wound up under this Act voluntarily or subject to supervision ;

(*iii*) the circumstances in which an unregistered company may be wound up are as follows (that is to say) :—

(*a*) if the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs ;

(*b*) if the company is unable to pay its debts ;

(*c*) if the Court is of opinion that it is just and equitable that the company should be wound up ;

* Act X of 1866. † Act VI of 1882.

(*iv*) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(*b*) if any suit or other legal proceeding has been insituated against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(*c*) if execution or other process issued on a decree or order obtained in any Court in favour of a credior against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied; and

(*d*) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

Notes—A foreign company consisting of more than seven members can be wound up under this section if it has office and assets here. *Syrian Ottoman Rail Co*, (1904) 20 T. L. R. 217; *Matheson Bros.* (1884) 27 C D. 225; *Commercial Bank of India*, (1868) 6 Eq 517, *Jarvis Conklin Mortgage Co.*, (1895) 11 T. L. R. 373; 2 Mysore Law Journal, 165; 33 Ch. D 174; (1892) 2 Ch 204; 5 C 888. The Court has jurisdiction where such a company transacts business within its jurisdiction and has an office within its jurisdiction (1898) 6 Eq. 517. The fact that an order for the winding up of the company or for continuing its winding up subject to supervision has been made by a competent Court of the place of the company's incorporation does not make any difference to the jurisdiction of the Court here. Stiebel, p. 787 citing 27 Ch. D. 225; 33 Ch. D. 174; 62 L. J Ch. 561. An incohate foreign company or a partnership for promoting foreign company cannot be wound up. (1872) 26 L. T 229 Concerns of the same nature as companies exactly designated can be dealt with under this section. 127 Ind. Cas. 736=A. I R. 1930 Rang. 337.

Contributories in winding up of unregistered companies.

272. (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of any contributory dying or being adjudged insolvent, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and to the assignees of insolvent contributories shall apply.

Notes.—Under this section every debtor to the company is not a contributory. A person who has taken shares through a trustee is liable equitably to the trustee, but he is not a contributory. *British National Life Assurance*, (1878) 8 Ch. D. 679. An officer of the company who has misappropriated the assets of the company and who is liable to refund the same is also not a contributory. *Sarres Case*, (1890) 45 C. D. 537; see also *Exparte Littlebale* (1874) 9 Ch. 257.

Power to stay or restrain proceedings.

273. The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

Notes.—In a compulsory winding up the onus lies upon the person who wishes to show that the action should be continued notwithstanding the winding up. *Currie v. Consolidated Kent Collieries Corporation* (1906) 1 K. B. 134, cited in Stiebel, p. 909.

Suits stayed on winding up order.

274. Where an order has been made for winding up an unregistered company, no suit or other legal proceedings shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

Notes.—This section is applicable to action against a contributory as such and not to an action by a holder of promissory notes though they had been given as security for advances to the company. *South of France Pottery Works Syndicate*, (1877) 37 L. T. 260.

Directions as to property in certain cases.

275. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order, or by any subsequent order, direct that all or any part of the property, movable or immovable, including all interests and rights in, to and out of property, movable and immovab'e, and including obligations and actionable claims as may belong t
its behalf, is to vest in the official liquidator by
the property or the part thereof specified in
and the official liquidator may, after giving such
may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Vesting in official liquidator.—All properties under this section vest in the official liquidator in his official character. *Graham v Edge*, (1888) 20 Q. B. D 683. Where there are several liquidators, all must join in giving effect to a valid conveyance. *Ebsworth and Tiday's Contract*, 42 Ch. D. 23.

Provisions of this Part cumulative.

276. The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or official liquidator may exercise any powers or do any
h might be exercised or done by
d registered under this Act; but
e event of its being wound up, be
then only to the extent provided
by this Part.

PART X.

COMPANIES ESTABLISHED OUTSIDE BRITISH INDIA.

Requirements as to companies established outside British India.

277. (1) Every company incorporated outside British India, which at the commencement of this Act has a place of business in British India, and every such company which after the commencement of this Act establishes such a place of business within British India, shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar in the province in which such place of business is situated,—

(*a*) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;

(*b*) the full address of the registered or principal office of the company;

(*c*) a list of the directors and managers (if any) of the company;

(*d*) the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company's service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in such address or in the directors or managers or in the names or addresses of any such persons as aforesaid, the company shall, within the prescribed time, file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

:h this section applies shall in every year file
in which the company has its principal place

(*i*) in a case where by the law, for the time being in force, of the country in which the company is incorporated such company is required to file with the public authority an annual balance-sheet,—a copy of that balance-sheet; or

(*ii*) in a case where no such provision is made by the law, for the time being is force, of the country in which the company is incorporated,—such a statement in the form of a balance-sheet as such company would, if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act:

Provided that the Governor General in Council may, by notification in the *Gazette of India* subject to such restrictions and conditions, if any, as he may therein prescribe, exempt any such company or any class of such companies from this requirement.

(4) Every company to which this section applies and which uses the word "Limited" as part of its name, shall—

(*a*) in every prospectus inviting subscriptions for its shares or debentures in British India, state the country in which the company is incorporated; and

(*b*) conspicuously exhibit on every place where it carries on business in British India the name of the company and the country in which the company is incorporated in letters easily legible in English characters and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place; and

(*c*) have the name of the company and of the country in which the company is incorporated mentioned in legible English characters in all bill heads and letter paper, and in all notices, advertisements and other official publications of the company.

(5) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

(6) For the purposes of this section—

(*a*) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(*b*) the expression "place of business" includes a share transfer or share registration office;

(*c*) the expression "director" includes any person occupying the position of director, by whatever name called; and

(*d*) the expression "prospectus" means any prospectus, notice, circular, advertisement or other invitation offering to the public for subscription or purchase any shares or debentures of the company.

(7) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

Notes.—The only mode of serving processes on foreign companies is that prescribed by s. 277 and not what are prescribed by Or. 29 R. 2. C. P. Code. A. I. R. 1928 Sind 111.

PART XI.

SUPPLEMENTAL.

Legal proceedings, offences, etc.

Cognizance of offences.

278. (1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

(2) If any offence which by this Act is declared to be punishable by fine only is committed by any person within the local limits of the ordinary original civil [illegible] Madras and [illegible] y any Presi- [illegible] ure, 1898,* [illegible], be deemed [illegible]

Complaint.—Ordinarily, a Magistrate should be chary of proceeding on a complaint of this kind except after reference to the Registrar of the joint-stock companies, or on the complaint of a responsible person. 12 Ind. Cas. 972; see also 14 P. R. 1916 Cr. Simple cases may be tried by a magistrate summarily 35 A 173.

Applications of fines.

279. The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or, in or towards the rewarding of the person on whose information the fine is recovered.

Power to require limited company to give security for costs.

280. Where a limited company is plaintiff or petitioner in any suit or [illegible] unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Notes.—This section is not applicable to misfeasance proceedings by a liquidator. *Strandwood Co*, (1904) 2 Ch. 1; see also 145 Ind. Cas 372 = 1933 A. L. J.

* Act V of 1898.

199=55 A. 250=A. I. R. 1932 All. 205. The fact that a company is in liquidation, even voluntary liquidation with a view to an amalgamation would appear to raise a sufficient *prima facie* case for ordering security. *National Bank of Wales* v. *Collins*, (1894) 38 Sol. J. 189 ; *Pure Spirit Co* v. *Fowler*, (1890) 25 Q. B. D. 235. *Northampton Coal Iron and Waggon* v. *Midland Waggon Co.* (1878) 7 Ch. D. 501, cited in Stiebel, p. 327. In directing the security the probable cost of the action is to be estimated. *Dominion Brewery* v. *Foster*, (1897) 77 L. T. 507 ; *Imperial Bank of China* v. *Bank of Hindustan*, (1866) 1 Ch. 437.

Power of Court to grant relief in certain cases.

281. If in any proceeding before any Court against a director of a company for negligence or breach of trust, it appears to such Court that the director is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think proper.

Notes.—Directors being required by Articles of Association to control manage- ... are not exempted though ... ection 281 is not designed ... 305=32 Bom. L. R. 232= A. I. R. 1930 Bom. 571.

Penalty for false statement.

282. Whoever in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

... tation of limited company sent ... nies it appeared that five persons ... s such undertaken to subscribe for 500 shares. ... sum due from them but inspite of this the accuse ... ission to commence business, after making th ... ctors had taken 500 shares and paid for them. *Held* that the accused led the registrar to believe that even the two directors who never paid any money had taken the shares and paid for them and he was therefore guilty under s 282 of the Act. 46 A. 218. Where a manager signs a balance-sheet containing a false statement he renders himself liable to prosecution under s 282 Companies Act even though it was not necessary for him to sign the balance-sheet. 134 Ind Cas. 993=25 S. L. R 297. In order to fix the penalty under s. 282 the false statements must be made wilfully knowing them to be false and no offence is committed if no dishonesty or motive for dishonesty is shown or where the directors acted on the advice of counsel. A. I. R 1929 Bom. 443=122 Ind. Cas. 141 ; but see 134 Ind. Cas. 993=25 S L. R. 297=A I. R. 1932 Sind 4. Auditors signing auditor's report below false balance-sheet make false statement and are liable under s. 282. A. I. R. 1932 Sind 4=25 S. L. R. 297=134 Ind. Cas. 993. Showing bad debts which are not paid and which are not likely to be paid as part of profit amounts to making false statement. *Ibid.* False statement must be with knowledge of its falsity. Statement must be shown to be false when it is made. A I. R. 1933 Sind 12=33 Cr L. J. 891=26 S. L R 211=1933 Cr. C 36 Mere showing of profit on paper is not necessarily misstatement. *Ibid.* Statement need not necessarily be made with intent to deceive. A. I. R. 1935 Cal. 741.

Penalty for improper use of word "Limited."

283. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used.

Notes.—A solicitor who enters an appearance for such persons under such name will be personally liable for costs. Stiebel, p. 55 citing *Simmons* v. *Liberal Opinion Ltd.*, (1911) 1 C. B. 966.

Saving of pending proceedings for winding up.

284. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed, and, for the purposes of the winding up, the Indian Companies Act, 1882,* shall be deemed to remain in full force.

nenced before the commencement of be applied as if the new Act has not Ind. Cas. 265=24 C W.N. 35 ; see also *Hem Raj* v. *Punjab Tannery*, 1923 Lah. 98 ; 58 Ind. Cas. 607 ; 68 Ind. Cas. 792 ; 28 Ind. Cas. 600 ; 43 Ind. Cas. 642.

Saving of document.

285 Every instrument of transfer or other document made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not been passed, and for the purposes of that instrument or document the repealed enactment shall be deemed to remain in full force.

N B.—This section corresponds to section 288 of the English Act. An instrument of transfer includes conveyance and deed of mortgage. *Vide* s. 288 of the English Act.

Former registration offices, registers, and registrars, continued.

286. (1) The offices existing at the commencement of this Act for registration of joint-stock companies shall be continued as if they had been established under this Act.

(2)

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(3)

shall, during

the salaries hitherto held and received by them, but subject to any regulations of the Local Government with regard to the execution of their duties.

N. B.—This section corresponds to section 289 of the English Companies Act.

Savings for Indian Life Assurance Companies Act, 1912, and Provident Insurance Societies Act, 1912.

287. Nothing in this Act shall affect the provisions of the Indian Life Assurance Companies Act, 1912,† or of the Provident Insurance Societies Act, 1912.‡

Construction of "registrar of joint-stock companies" in Act XXI of 1860.

288. In sections 1 and 18 of Act No. XXI of 1860 (for the registration of Literary, Scientific and Charitable Societies) the words "registrar of joint-stock companies" shall be construed to mean the registrar under this Act.

Act not to apply to Banks of Bengal, Madras or Bombay.

289. Save as provided in sections 188 and 189, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay.

Repeal of Acts and Savings.

290. (1) The enactments mentioned in the Fourth Schedule are hereby repealed to the extent specified in the fourth column thereof:

Provided that the repeal shall not affect—

(*a*) the incorporation of any company registered under any enactment hereby repealed ; nor

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* Act VI of 1882. † Act VI of 1912. ‡ Act V of 1912.

(*b*) Table B in the Schedule annexed to Act No. XIX of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act ; nor

(*c*) Table A in the First Schedule annexed to the Indian Companies Act, 1882,* or any part thereof, so far as the same applies to any company existing at the commencement of this Act.

(2) All fees directed, resolutions passed and other things duly done under any enactment hereby repealed, shall be deemed to have been directed, passed or done under this Act.

(3) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897† with regard to the effect of repeals.

SCHEDULES.

THE FIRST SCHEDULE.

(*See sections 2, 17, 18, 79, 266.*)

TABLE A.

Regulations for Management of a Company limited by Shares.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Indian Companies Act, 1913, or any statutory modification thereof in force at the date at which
shall have the meanings so
include the plural, and *vice ve*
include females, and words in

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Indian Companies Act, 1913, if, and so far as, those restrictions are binding upon the company.

Notes—Section 282 makes provision for untrue declaration under section 103. 46 A 218.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.

company that may remain after all the shareholders have received a return of the capital they have paid up Sometimes there will be deferred or founder's shares perhaps of small nominal value, conferring rights to a considerable proportion of the profits, after a certain dividend has been paid on the other shares of the company and also, in some cases a right to a considerable share of the assets after the other share-

* VI of 1882. † X of 1897.

Notes.—A solicitor who enters an appearance for such persons under such name will be personally liable for costs. Stiebel, p. 55 citing *Simmons* v. *Liberal Opinion Ltd*, (1911) 1 C. B. 966.

Saving of pending proceedings for winding up.

284. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed, and, for the purposes of the winding up, the Indian Companies Act, 1882,* shall be deemed to remain in full force.

Notes.—In winding up proceedings commenced before the commencement of Act VII of 1913, the former Act VI of 1882 is to be applied as if the new Act has not been passed at all. *Gordhan Das* v. *Kanthi*, 97 Ind. Cas. 265=24 C W.N. 35 ; see also *Hem Raj* v. *Punjab Tannery*, 1923 Lah. 98 ; 58 Ind. Cas. 607 ; 68 Ind. Cas. 792 ; 28 Ind. Cas. 600 ; 43 Ind. Cas. 642.

Saving of document.

285 Every instrument of transfer or other document made before the *commencement of this Act in pursuance of any* enactment hereby repealed, shall be of the same force as if this Act had not been passed, and for the purposes of that instrument or document the repealed enactment shall be deemed to remain in full force.

N. B.—*This section corresponds to section 288 of the English Act.* An instrument of transfer includes conveyance and deed of mortgage. *Vide* s. 288 of the English Act.

Former registration offices, registers, and registrars, *continued.*

286. (1) The offices existing at the commencement of this Act for registration of joint-stock companies shall be continued as if they had been established under this Act.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(3) The existing registrars, assistant registrars and officers in those offices shall, during the pleasure of the Local Government, hold the offices and receive *the salaries hitherto held and received by them, but subject to any regulations* of the Local Government with regard to the execution of their duties.

N. B.—This section corresponds to section 289 of the English Companies Act.

Savings for Indian Life Assurance Companies Act, 1912, and Provident Insurance Societies Act, 1912.

287. Nothing in this Act shall affect the provisions of the Indian Life Assurance Companies Act, 1912,† or of the Provident Insurance Societies Act, 1912.‡

Construction of "registrar of joint-stock companies" in Act *XXI of 1860.*

288. In sections 1 and 18 of Act No. XXI of 1860 (for the registration of Literary, Scientific and Charitable Societies) the words "registrar of joint-stock companies" shall be construed to mean the registrar under this Act.

Act not to apply to Banks of Bengal, Madras or Bombay.

289. Save as provided in sections 188 and 189, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay.

Repeal of Acts and Savings.

290. (1) The enactments mentioned in the Fourth Schedule are hereby repealed to the extent specified in the fourth column thereof:

Provided that the repeal shall not affect—

(*a*) the incorporation of any company registered under any enactment hereby repealed ; nor

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* Act VI of 1882. † Act VI of 1912. ‡ Act V of 1912.

(*b*) Table B in the Schedule annexed to Act No. XIX of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor

(*c*) Table A in the First Schedule annexed to the Indian Companies Act, 1882,* or any part thereof, so far as the same applies to any company existing at the commencement of this Act.

(2) All fees directed, resolutions passed and other things duly done under any enactment hereby repealed, shall be deemed to have been directed, passed or done under this Act.

(3) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897† with regard to the effect of repeals.

SCHEDULES.

THE FIRST SCHEDULE.

(*See sections 2, 17, 18, 79, 266.*)

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Indian Companies Act, 1913, or any statutory modification thereof in force at the date at [illegible] shall have the meanin[illegible] include the plural, an[illegible] include females, and [illegible]

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Indian Companies Act, 1913, if, and so far as, those restrictions are binding upon the company.

Notes—Section 282 makes provision for untrue declaration under section 103. 46 A 218.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine

Notes—Very frequently the shares of a company are divided into two or more [illegible] ference [illegible] further [illegible] mpany, [illegible] a right [illegible] ast case [illegible] of the [illegible] also, in some cases a right to a considerable share of the assets after the other share-

* VI of 1882. † X [illegible]

holders have received back the capital they have paid—Stiebel, p. 316. Preference shareholders are members of the company and not its creditors. (1889) 14 A. C. 525. The company may also issue second preference shares. *Palmer*, vol. I, p. 802.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class I o ever
these regulations relating to
so that the necessary quorum
by proxy one-third of the issued shares of the class

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 101 and 104 of the Indian Companies Act, 1913, as may be applicable thereto.

Notes—The allotment must be made by the directors for the best interest of the company. (1902) 2 Ch. 421 at p. 425 If the allotment is made at an under-value, the directors are liable to make good the loss sustained by the company. (1900) 2 Ch 305 In allotting shares the directors must exercise the powers with good faith. (1903) 2 Ch 506; (1920) 1 Ch. 77

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause The company's lien, if any, on a share shall extend to all dividends payable thereon.

Notes.—This lien has priority over mortgagee of the shares. *Borland's Trust* v. *Steel Brothers*, (1901) 1 Ch. 279; see also *New London and Brazilian Bank* v. *Brockbank*, 21 Ch. D 302; *Bradford* v. *Briggs*, 12 A. C. 29 The transferee takes subject to a lien the company had against his transferor, *Stiebel*, p. 274.

10. The company may sell, in such manner as the director thinks fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time, make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

Notes.—The articles of association usually contain provisions for enabling calls to be made, and not infrequently provide that not more than a certain amount is to be called up at a time and that a specified period [illegible] article authorising calls to be made from time to ti[illegible] exceed a specified sum, will not prevent two calls, [illegible] *[illegible]al Corporation* v. *Hughes*, (1909) S. C. [illegible]t who does not know of his defective [illegible] v. *African Co*, (1898) 1 Ch. 6 : *British* [illegible]*ock Proprietory* v. *Fuke*, (1906) 1 Ch. [illegible] T. L. R. 305 ; *British Medical* v. *Jones*, (1896) 74 L. T. 384. But a person who has not been appointed a director at all cannot make a call. *Tyne Mutual Steamship Co*, v. *Brown*, (1896) 74 L. T. 283 ; *Gordon Gallv, etc.* v. *Co*, *McLister*, (1876) 1 A. C. 39.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

Notes.—This provision does not apply to calls made in a winding up. *Welsh Flannel and Tweed Co.*, (1875) 20 Eq. 360 , *Exparte Lintoll*, (1867) 4 Eq 184.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him ; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent) as may be agreed upon between the member paying the sum in advance and the directors.

Notes.—The powers given under this article is perfectly valid. *Lock* v. *Queensland Co*, (1896) A. C 461 ; (1896) 1 Ch 397 ; *Dale* v. *Martin*, (1883) 11 L. R. Ir. 371. When such a payment has been made the relation of debtor and

creditor, and not that of company and shareholder, exists *qua* such payment between the company and the member making the payment. Stiebel, p. 263 citing *Lock* v. *Queensland Co*, (1896) A. C. 461.

Transfer and transmission of shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

Notes.—Where the article is silent on the subject, the transfer is to be made in accordance with the custom of the company. *Morino's Case*, (1867) 2 Ch. 596.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, A B of , in consideration of the sum of rupees paid to me by C D of (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [*or* shares] numbered in the undertaking called the Company, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share [*or* shares] subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, etc.

Notes.—This article is directory only. (1904) 1 Ch. 815

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also

a lien The

ourteen days

year. The

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respect there of; and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

Notes.—Where the deed of transfer is not properly stamped a company may refuse registration. *Maynard* v. *Consolidated Kent Collieries* (1903) 2 K. B. 331. Where the articles restrict transfers by a person indebted to the company, it was held that it must be read with the articles giving the company a lien. *Stockton Malleable Iron Co.*, (1876) 2 Ch D. 101 cited in *Stiebel*, p 285.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

Notes.—Upon the death of a member, his executors and administrators are entitled to become members and to receive dividends and are liable for calls in respect of shares held by the deceased holder. (1899) 2 Ch. 43; (1914) 2 Ch. 670; (1879)

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Tuticorin Cotton Press Co, (1894) 71 L. T. 723. It would seem that in the

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in what order their names are to appear in the company's register. *T. & H. Saunders & Co.*, (1908) 1 Ch. 415

22. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time, be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent person before the death or insolvency.

Notes—Transfers of share or other interest of a deceased member of a company which are made by his personal representative will, although the personal representative is not himself a member, be valid as if he had been a member at the time of the execution of the transfer. Stiebel, p. 284.

23. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of shares

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

Notes—The power of forfeiture is not implied and as such the articles of
ame. *Clarke* v *Hurt*, 6 H. L. C. 633;
A prospective notice that shares will be
further resolution of the directors, be
J 46. A more or less ambiguous notice
strued as a mere threat to forfeit *Moore*
s' *Case* (1866) 1 Eg 309; *Colvin's Case*
(1870) 30 L. J. Ch. 259 cited in Stiebel, p 276. A notice by directors for payment of a call does not by itself render forfeiture of shares—subsequent resolution by directors is necessary. 130 Ind Cas 534=A. I. R. 1931 Pat 44 A valid call and default are conditions precedent to and necessary for a valid forfeiture. 125 Ind. Cas. 419.

25. The notice shall name a further day (not earlier than the expiration of fourteen days, from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

Notes—The provisions of th ... e strictly
followed, as any irregularity in ... 5 Ch. D.
687) or even in a call out of which ... Ch D.
631; *Gorden Gulley* v. *McLister* (1 ... orfeiture.
Stiebel, p. 276 Although the notice ... amounts
called were not paid on the dates specified, the shares would be forfeited, in the absence of a resolution by the directors actually forfeiting the shares as required under the Articles of Association of the company, there is no valid forfeitures of the shares. A. I. R. 1934 Lah. 1015= 36 P. L. R. 282.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

a discount. *Ramwell's* Cas ... unpaid shares has been paid ... purchased forfeited shares is discharged from all calls due prior to his purchase. *Randt Gold Co.* (1904), 2 Ch. 468. The company may issue forfeited shares as paid-up to the extent of the ... 827. ... osal of ... A. I. R. 1935. Lah. 190

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company received payment in full of the nominal amount of the shares.

Notes.—A forfeited shareholder ceases to be a member but his liability for money payable to the company at the time of forfeiture in respect of the forfeited share, including any interest on arrears of calls remains. *Stocken's Case*, (1868) 3 Ch 412 ; *Ladies' Dress Association* v *Pulbrook*, (1900) 2 Q. B. 276. On forfeiture of share the shareholder ceases to have any liability for future calls and becomes liable for unpaid calls as a debtor of the company. 110 Ind Cas. 33 If the forfeiture takes place within a year from the winding up such a forfeited shareholder is placed in the B list of the contributories. *Creyke's Case*, (1870) 5 Ch. 63 ; *Marshall* v. *Glamargon*, (1868) 7 Eq 129 ; *Bate's Case* (1878) 8 Ch. D. 334. Company's inability to realize calls by lapse of time is no answer to liquidators' claim for contribution. A. I R. 1931 Pat 44=12 P L. T. 15=10 Pat. 249=130 Ind. Cas. 534.

29. A dully verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, ... consideration, if any, given for the share ... constitute a good title to the share, and ... disposed of shall be registered as the ... be bound to see to the application of the ... his title to the share be affected by any ... proceedings in reference to the forfeiture, sale or disposal of the share.

Notes —It is usual for the articles to provide that where forfeited shares have been sold the purchaser shall have good title and the right of the person aggrieved shall be in damages against the company only. Such a right may be enforced in winding up. *New Chile Gold Mining Co*, (1890) 45 Ch D 398, cited in Stiebel, p. 276

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, become payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of shares into stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction re-convert any stock into paid up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof in the same manner, and subject to the same regulations, as, and subject to which,

the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage

34. Such of the regulations of the company (other than those relating to share warrants), as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Share-warrants.

35. The company may issue share-warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends, or other moneys on the shares included in the warrant.

36. A share-warrant shall entitle the bearer to the shares included in it and the share shall be transferred by the delivery of the share-warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share-warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

Notes—A share-warrant is a negotiable instrument. *Webb Hale & Co. v. Alexandria Water Co*, (1905) 93 L. T 339.

38. The bearer of a share-warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

39. Subject as herein otherwise expressly provided, no person shall, as [illegible] the com- [illegible] meeting [illegible] but the [illegible] the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share-warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

Notes—The exact increase proposed must be given in the notice. (1916) 2 Ch 57.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

. 3 Bom. H. C O. C. J.
ɔer are entitled to the
es v. *Buena Ventura*,
Ch. 656. If shares are
·d belong to the estate
and if they are not in a position to take them the right to call for the new shares should, if valuable, be sold for the benefit of the estate 50 L. J. Ch. 747 ; 51 L. J. Ch. 447—cited in Stiebel, p 315.

43. The new shares, shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

44. The company may, by special resolution,—

(*a*) consolidate and divide its share capital into shares of larger amount than its existing shares ;

(*b*) by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the ... paragraph

... ion, have not been taken or agreed to be taken by any person ;

(*d*) reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section 77 of the Indian Companies Act, 1913.

... l once in every year at such time (not ... e holding of the last preceding general ... by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall

be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

Notes.—The directors can call such a meeting. (1875) 10 Q. B. 329, at p. 339. A secretary has no power to call such a meeting. (1900) 2 Ch. 230; (1901) 2 Ch. 431. Only the directors of the company in general meeting can authorise the name of a company being used in any proceedings. *La Compagniede Mayvile* v. *Whitley*, (1896) 1 Ch. 788.

47. The above-mentioned general meetings shall be called ordinary. meetings; all other general meetings shall be called extraordinary.

48. , call an extraordinary general meeti . shall also be called on such requisition, or in default, may be called by such requisitionists, as provided by section 78 of the Indian Companies Act, 1913. If at any time there are not within British India sufficient directors capable of acting to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be called by the directors.

Proceedings at General Meeting.

49. Fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; *but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.*

Notes.—Notice cannot be given that a meeting will be held on certain contingencies happening *Alexander* v. *Simpson*, (1889) 43 Ch D 139; *Espuela Land and Cattle Co*, (1900) 48 W R 684 As to what will amount to a sufficient statement of the general nature of business, *vide Betts* v. *Macnaughten*, (1910) 1 Ch. 430.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

Notes.—In the article it is generally provided that a certain number of members is to constitute a quorum. *Cf. Hemans* v. *Hotchkiss Ordnance Co*, (1899) 1 Ch. 115. If there is no provision the majority can bind the company. *Rex* v. *Varlo*, (1775) 1 Cowp. 248; *Rex* v *Monday*, (1877) 2 Cowp 530; *Grindley* v. *Barker*, (1798) 1 Bos & Pull 229. Even where the articles do not make any provivision for quorum, two members must be present to constitute a meeting. *Sharp* v. *Dawes*, 2 Q B D 26, *Sanitary Carbon Co*, (1877) W. N 223. In computing quorum the proxies are not counted. *Cf.* 23 W. R 405 (Eng) 1920 W. N. 274 (Eng.).

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

Notes.—At the adjourned meeting if a quorum is not present within half an hour, the members whose number must be two or more shall be a quorum. One member can not constitute a quorum. 2 Q. B. D. 26. In counting quorum members not entitled to vote are not counted. *Henderson* v. *Lontit & Co.*, (1884) 21 Rettie, 674.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

preserve order, and to take care that and that the sense of the meeting question that is before the meeting. v. *Sykes*, (1894) 3 Ch. 159.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

Notes—In such a case the elected chairman is not bound to vacate the chair even if the permanent chairman comes afterwards *Blackwell*, p. 18.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Notes—The chairman cannot adjourn the meeting at his own pleasure. If he

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

Notes—It is the chairman's business to ascertain the sense of the meeting. This is done in the first instance by a show of hands. *Vide Hurbury Bridge Coal, Iron and Waggon Co.*, (1879) 11 Ch. D 109. Even on a special resolution proxies will not, unless they are held by a person not otherwise entitled to vote, be counted. Stiebel, p. 392 citing *Ernest* v. *Loma Gold Mines*, (1897) 1 Ch. 1; *Caloric Engineer and Siren Fog Signals Co*, (1875) 52 L. T. 846.

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Notes.—Any voter can demand a poll. *Campbell* v. *Mound*, (1836) 5 A. & E. 15; *Reg.* v. *Wimbledon Local Board* (1882) *hnal Green*, (1875) 32 L. T. 588. A holder *g* v. *Government Stock Investment*, (1878) (1882) 20 Ch. D. 151. The effect of such demand is to do away with the proceeding of show of hands altogether. *Anthony* v. *Segar*, (1789) 1 Hag. C. C. 13; *Reg.* v. *St. Mathew, Bethnal Green* (1875) 32 L. T.

558 ; *Reg* v. *Cooper*, (1870) L. R. 5 Q. B. 475. Such a demand cannot be withdrawn when it is being seconded, without the consent of the seconder. *Reg.* v. *Dever.* (1903) 1 K. B. 668. The chairman's declaration is *pirma facie* evidence of a poll. *Wandsworth Gas Light Co.* v. *Wright* (1870) 22 L. T 404 ; *Indian Zoedone Co.*, (1884) 26 Ch. D. 70. The Court will not go behind the chairman's declaration except in the case of fraud. *Hadleigh Castle Gold Mines* (1900) 2 Ch. 419; *Arnot* v. *United African Lands*, (1901) 1 Ch. 518.

58. In the case of an equality of votes, whether on a show of hands or on a poll, *the chairman of the meeting at which the show of hands takes place, or at* which the poll is demanded, shall be entitled to a second or casting vote.

Notes—Where there is no provision in the Articles of Association, the chairman is not entitled to a casting vote *Nell* v. *Longbottom*, (1894) 1 Q. B. 767. In the absence of any such provision in the Articles of Association any proposition would fall to the ground in the case of equality of votes. *Cf Re Chapman*, (1704) Holt 443 ; *Rex* v. *Gineuer*, (1796) 9 T R 732 ; *Rev* v. *Tipperary* (1903) 2 Ir. 108. A casting vote will be in addition to any vote which the chairman is entitled to as a member. *Nall* v *Longbottom*, (1894) 1 Q B 767.

59. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Notes.—The right time to demand a poll would seem to be immediately after the chairman's declaration on the show of hands *Campbell* v *Mound*, (1836) 5 A. &. E. 865 The chairman is to decide when and where the poll is to be held. *Reg.* v. *D, Oyly*, (1840) 12 A &. E. 139 ; *Rex* v. *Chester*, (1834) 1 A. & E. 342 ; *Chillington Iron Co*, (1885), 29 Ch D. 159.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

Notes.—Each member present will have one vote *Harbury Bridge Coal, Iron, and Waggon Co.*, (1879) 11 Ch. D. 109. A holder of a proxy, who is not a member can only vote, if he is entitled to vote as such, (1897) 1 Ch. 1 ; (1885) 52 L T 846. On a poll the number of votes each member has, and also proxies, will be counted. Not infrequently scrutineers are appointed, but the result of the poll should be declared by the chairman. Stiebel, p. 395 citing *Indian Zoedone Co*, (1884) 26 Ch. D. 70.

61. In the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders ; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his commitee or other legal guardian, and any such commitee or guardian may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy : Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act, 1913, is in force.

Notes—No member is entitled to vote by proxy unless the Articles of Association authorize him to do so. *Harbur* v *Phillips*, (1883) 23 Ch. D. 14.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an

officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

Notes.—*Prima facie* there is no right to vote by proxy, for the common law does not recognize any such mode of voting; but the Articles generally confer such a right, for it is extremely inconvenient that a member, specially when residing at a distance, should be obliged personally to attend every meeting Palmer's *Company Law*, p 172. Where the Articles make provision that the instrument should be signed in the presence of a witness, in such a case, signature in the presence of a witness is necessary. *Harbem* v. *Phillips*, 23 Ch. D. 32. A proxy can not attest his own appointment. *Exparte Cullen*, (1861) 2 Q. B. 151.

66. The instrument appointing a proxy and the power-of-attorney or other authority (if any), under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

Notes—The Articles very commonly require instruments of proxy to be deposited with the company a certain number of hours before the meeting. Palmer's *Company Law*, p 173 The presence of a member in a meeting after appointing a proxy does not cancel the proxy but if he votes at the meeting the proxy will be revoked *Knight* v *Bulkby*, 5 Jur N. S. 817.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:

Company, Limited.

"I of in the district of , beingl a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] genera meeting of the company to be held on the day of and at any adjournment thereof."

Signed this day of .

Notes—This article does not require a proxy to be attested. Under the Indian Stamp Act a proxy requires 2 annas stamp, *vide* Art. 52 of the Stamp Act. In England a proxy for a single meeting requires a penny stamp If for several meetings, it requires a 10s. stamp. *Vide* section 80 of the English Stamp Act, 1891. See also (1915) 32 T L. R. 183 A
filled up before it is deposited or use
Ernest v. *Loma Co*, (1897) 1 Ch.
signatures and dates on the stamp. 71 L. J. Ch. 755.

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

commonly the Articles,
s, or the majority of them
111. The majority of the
ng the appointment or by
subscribers are present.
Great Northern Salt Co, 44 C. D. 471; *London and Southern & Co*, 31 Ch. D. 223. If the appointment be made in a meeting due notice of such a meeting must be given. (1891) 2 Ch. 386.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

Notes.—*Prima facie* a . .
Imperial & Co, 3 Bar & . . . .
Strand v. *Royal Aquarium* . . . .
the Articles make provisi . . . .
ration. (1921) I. K B. 423. Such remunerations may be paid from the funds of the company even where the company has acquired no profit. *Harry Lewis' Case*, 26 L. 673. But where there is no provision in the Articles or where it has not been determined in a general meeting such remuneration cannot be paid (1895) 1 Ch. 674; 22 A. L. J. 883; (1916) A. C 554.

70 The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 85 of the Indian Companies Act, 1913

Notes —The qualification is required in order to give a director a personal interest in the holding *Archer's Case*, (1892) 1 Ch. 322. 'The meaning of such a clause is, that the director is under an obligation to acquire the requisite qualification in same way or other, whether from the company, or by transfer from a friend, or by purchase in the market; but that he is to have a reasonable time—say a few weeks—within which to do so. *Brown's Case*, 9 Ch 102". Palmer's *Company Law*, p. 183. Joint holding gives the requisite qualification *Glory Paper Mills* (1894) 3 Ch. 473; *Grundy* v. *Briggs*, (1910) 1 Ch. 444. As to the effect of raising the share qualification on existing directors, *vide* (1902) 2 K. B 589.

Powers and duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Notes —The articles generally give to the directors a number of specific powers scattered up and down the various clauses, but, in addition to these specific powers, there is almost always inserted a general clause on the lines of this article, providing that the directors may exercise all the powers of the company not by the articles or by statute required to be exercised by the company in general meeting. Palmer's
. . . vesting of powers in the directors is valid
. . . e in considering whether any particular
. . . by such a clause on the directors, is to search the articles and the Acts to see whether there is any express provision requiring for that transaction the authority of the company in general meeting, and, if there is no such provision, the directors must be treated as competent to carry out the transaction. *Ibid.* p. 189; see also L. R. 6 Ch. 83; 20 Eq 339; (1891) 1 Ch. 173; 45 L. J. Ch. 437.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commision, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

Notes.—The maxim *"delegatus non potest delegare"* applies to directors and they
3. 936) ; but
, and usually
d agents and
determine their duties and powers, and further that the directors may delegate to any one or more of themselves any of their powers. Palmer's *Company Law*, p. 197. By this article the directors
managing director. But by
their right of supervision ov
case may be. (1908) 99 L. T. 524 ; (1874) 9 Ch. 691.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

Notes.—Under article 71, the directors have got the power of borrowing on behalf of the company. This article limits the borrowing powers to a sum not exceeding the paid up capital. But the company can increase the limit by ordinary resolution. (1877) 2 A C. 366 at p. 374. Where the directors borrow in excees of their powers, the acts may be ratified in a general meeting. *Ibid.*

74. The directors shall duly comply with the provisions of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, and to keeping a register of the directors, and to sending to the registrar an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notifications of any changes therein

75. The director shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors ;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors ;

(*c*) of all resolutions and proceedings at all meetings of the company, and, of the directors, and of committees of directors ;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

76. The s
by the authorit
of at least two
may appoint f
person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Notes.—The affixing of seals by some unauthorised person does not bind the company. *Mayor, etc., of Merchants of the Staple* v *Bank of England*, (1887) 21 Q. B. D. 160 ; *Ruben* v. *Great Fingall*, (1906) A. C. 439.

Disqualifications of Directors.

77. The office of directors shall be vacated if the director—

(*a*) ceases to be a director by virtue of section 85 of the Indian Companies Act, 1913 ; or

(*b*) holds, or any partner of his, or the firm of which he is a member, holds, any other office of profit under the company except that of managing director or manager ; or

(*c*) is adjudged insolvent ; or

(*d*) is found lunatic or becomes of unsound mind ; or

(*e*) is concerned or participates in the profits of any contract with the company ; or

(*f*) is punished with imprisonment for a term exceeding six months :

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director, but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

Notes.—On the happening of the event, a director vacates his office automatically. *Bodaga Co Limited*, (1904) 1 Ch. 276 Even apart from such a provision, it is well settled that the acceptance by a director of an incompatible office vacates his directorship. Palmer's *Company Law*, p. 182 citing *Milner* v. *Thatcyer*, 2 T. R. 81 ; *Eales* v *Cumberlandhead Co.*, 6 H. & N. 481 ; *Iron Ship Co*, v. *Blunt*, L. R. 3 C. P. 484.

Clause (c).—Becomes insolvent after election. (1898) 1 Ch. 6 ; see also 10 H. L. Cas. 404 ; *Sissons* v. *S.* 54, S. J. 802.

Rotation of Directors.

78. At the first ordinary meeting of the company, the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year, one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they therwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors or such of them as have not not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring on the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Notes.—Such a power continues to be exercisable even after a general meeting of the company, if the vacancy still continues. *Munster* v. *Cammell*, (1882) 21 Ch. D. 183 ; *Zennett Bros.* v. *Lewis*, (1904) 20 T. L. R. 1.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead ; the person so appointed shall be subject to

retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Notes.—Even in the absence of such an article from a company's Articles of Association, a director can be removed for misconduct. *Boston Deep Sea Fishing Co.* v *Ansell*, (1888) 39 Ch D. 339 ; *Cf. Kayshe* v. *Alturas Gold Co*, (1888) 36 W. R. 496. By this article a director can be removed by an extraordinary resolution. In such a case the delinquent director is not entitled to a hearing in his defence. *Dean* v. *Bennett*, (1876) 6 Ch. 489 ; *Haymon* v. *Governors of Rugby School*, (1874) 18 Eq. 28. He is also not entitled to any notice. *African Association* v. *Allen*, (1910) 1 K. B. 396.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors.

Notes—Notice of the meeting must be given to all directors 42 Ch. D. 160. But such notice can be dispensed with where they are travelling abroad. 59 L. J. Ch. 591.The directors need not meet where they agree to a particular course. *Exparte Kennedy* (1890) 44 Ch. D. 472 ; *Hollows* v *Fernie*, (1867) 3 Eq 520.

Vote—Every director has got one vote. *Vide* 11 Ch. D. 190 Any question raised in a meeting is to be decided by a majority of votes *Rex* v *Vaxlo*, (1775) 1 Cowp. 248. *Rex* v *Monday*, (1877) 3 Cowp 530 ; *Perry* v. *Shipway*, (1859) 1 Giff. 1 ; *Wilkinson* v. *Malin*, (1832) 2 Tyr. 544.

Meeting.—The meeting of the directors should be duly convened. (1900) 2 Ch. 230 ; (1867) 2 Exch 158. Apart from any special powers the directors can only act as a board *D' Arcy* v. *The Tamar, etc. Railway*, (1867) L. R 2 Ex 158 ; *Howard's Case*, (1866) 1 Ch. 561 ; *John Morby Building Co* v. *Carras*, (1891) 2 Ch. 386. There need not be any fixed place of meeting All that is required is that they must meet in some place where all may be present and may have the opportunity of expressing their assent or dissent. *D' Arcy* v. *The Tamar etc.* (1867) L R. 2 Ex. 158.

Casting vote.—A chairman who is not duly appointed can not give a casting vote. (1920) 1 Ir. Rep 107

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

Notes—In the absence of any provision for quorum in the Articles the majority of the whole number of directors can act. *York Tramways* v. *Willows*, (1882) 8 Q. B. D. 685. But it is doubtful whether any smaller number can act. *Portuguese Consolidated Copper Co. Steele's Case* (1889) 42 Ch. D. 160 In a meeting where the quorum is present, all the authorities, powers and discretions vested in the directors can be exercised. "A bare quorum is capable to act and bind the company at a meeting duly convened, with proper notice given to the other directors, at which therefore all the other directors may, if they please, be present." (1888) 38 Ch. D. 546 at p. 550. Even a quorum of one can be fixed (1916) 2 Ch 142. The directors who are not competent to vote are not counted. (1904) 1 Ch. 32 ; (1903) 19 T. L. R. 602.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

Notes.—Where the Articles provide that the directors are not to be less than a certain number, in such a case, if there are not the minimum number of

directors, the directors cannot act. *Kirk* v. *Bell*, (1851) 16 Q. B. 290; *Faure* v. *Phillipart*, (1888) 58 L. T 325; *British Empire Match Co*, 59 L. T. 291. It ... s may act and the ... are more than the ... dinary business only. ... 901) 1 Ch. 115. An ... ere there never has ... 1911) 2 Ch. 430. But the better opinion seems to be that under such an Article continuing directors can act though there are too few of them to form a quorum (1900) 2 Ch. 272; (1901) 1 Ch. (115); 8 Q. B D. 685; 23 Ch. D. 413. Stiebel, p 361.

90. The directors may elect a chairman of their meetings and determine the period for which be is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

Chairman.—The duties of the chairman are to preserve order, and to take care that proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question that is before the meeting. *National Dwellings Society* v. *Sykes*, (1894) 3 Ch. 159.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so "formed"* shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

Notes.—Such a committee may where that seems to be the intention of the Article consist of a single director. *Taurine Co.* (1883) 25 Ch D 118; (1916) 2 Ch 142. Even in such a case the directors have the right of supervision over the acts of the committee. *Horn* v *Henry Foulder & Co*, (1901) 99 L. T 5 524; see also *Cartmel's Case*, (1874) 9 Ch 691

92. A committee may elect a chairman of their meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of ... , shall, notwithstanding that ... defect in the appointment of ... that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director

Notes.—The defects must be discovered after the Act *Murray* v *Bush*, (1873) L. R. 6. H. L. 37; *British Asbestos Co* v *Boyd* (1903) 2 Ch. 439 The word "qualified" must not be read in the narrow sense of qualification as regards holding the qualification shares *British Asbestos Co* v *Boyd*, (1903) 2 Ch 430: but see 42 Ch. D. 160 When a dividend is declared and becomes payable it is a debt. *Re.* ... il declaration the shareholder can not sue ... erson has ceased to be a director by the ... elected enters into an agreement as director ... arty and the other shareholders agreed to ratify and also to carry out the terms of the agreement, the irregularity, if any; is cured by article 94, and the company is estopped from challenging the validity of the agreement on the ground that the directors were not duly elected A. I. R. 1935. Rang. 76.

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* The word within quotations has been substituted by Act 10 of 1914.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

Notes.—Dividends are genrally [illegible] 25 Ch. D. 752 Dividends can only be paid in ca[illegible] ; (1867) 3 Ch. App. 262. Where payment by part [illegible] olved from its liability by sending the dividend warrant by post. *Thairwall* v. *Great Northern Railway*, (1901) 2 K. B. 509.

96. The directors may from time to time pay to the members such *interim* dividends as appear to the directors to be justified by the profits of the company.

Notes.—The article authorises the directors to pay *interim* dividends only out of profits. *Vide* (1903) 20 T. L. R. 16 ; (1914) 1 Ch. 558 ; (1901) 85 L. T. 22.

97. No dividends shall be paid otherwise than out of profits.

Notes.—Dividends are only to be paid out of profits, and not out of capital. In *re Oxford Benefit Building Society*, 35 Ch. D 502; *In re National Funds Insurance Co.*, 10 Ch. D. 126; *Fletcroft's Case*, 21 Ch. D. 519 ; *Alexandra Palace Co*, 21 Ch. D. 149 ; 36 Ch D. 807; (1892) 1 Ch. 154. Payment out of capital is *ultra vires*. *Trevor* v. *Whitworth*, 12 App. Cas. 409. If the directors pay dividends out of the capital they are jointly and severally responsible for payment. *Fletcroft's Case* 21 Ch. D 519 If the directors pay fictitious dividends may be made criminally liable. *Burns* v. *Pennell*, (1849) 2 H. L. C. 525 ; *Regina* v. *Esdaile*, (1858) 1 F & F. 213. So dividends can only be paid out of profits asce tained by a proper profit and loss account and balance-sheet, as commercial men generally ascertain profits, throughout the world *Hotby's Case*, 2 Eq. 175 ; 4 Ch. 475 ; (1894) 2 Ch. 264 ; (1892) 2 Ch. 198 ; 4 Ch. D. 825 ; 16 Ch D. 347 ; 35 Ch. D. 582.

98. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

Notes.—One of the most important points which the articles have to determine in reference to dividends is in what proportion the dividends are to be made payable as between the members. In the absence of any provision in the articles 'all the shares are entitled to participate equally in dividend, without regard to the amount paid up upon each." *Oakbank Oil Co* v *Crum*, 8 App. Cas. 65 ; see also *Bridgewater Co*, 14 App. Cas. 525. But this article gives a rateable dividend on the amounts paid on the shares

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

Notes.—Even where there is no provision in the article the directors can set apart a portion of the profit as reserve fund. They may invest such fund in any investments which they consider desirable. *Berland* v. *Earle*, (1902) A C. 13 ; *Fisher* v. *Black and White Co.* (1901) 1 Ch. 174. It is generally available for distribution of profits in succeeding years. *Hoare & Co.*, (1904) 2 Ch. 208 . *Bouch* v. *Sproule*, (1887) 12 A. C. 385 ; *Re Alsbuy*, (1890) 45 Ch. D. 237.

100. If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

Notes.—As between tenant for life and remainder man, the tenant for life is entitled to all profits distributed unless the company has validly capitalized them by

resolution or otherwise. Stiebel, p. 300 citing *Bouch* v. *Sproule*, (1887) 12 A. C. 385 ; *Re Piercy*, (1907) 2 Ch. 389 ; *Re Northage* (1891) 60 L. J. Ch. 488 ; *Hume Nisbit's Settlement*, (1911) 27 T. L. R. 461 ; *Re Palmer* (1912) 56 Sol. J. 363.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the person entitled to share therein.

Notes—Where a dividend is declared between the date of a contract for sale of shares and the transfer, it will be payable to the transferee if the contract be silent on the point. Stiebel, p. 304 citing *Black* v. *Homersham*, (1879) 4 Ex. D. 24.

102. No dividend shall bear interest against the company.

Cf. Rishton v Grissel (1870) 10 Eq. 393.

Accounts.

103. The directors shall cause true accounts to be kept—

(*a*) of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place ; and

(*b*) of the assets and liabilities of the company.

Notes—Directors are agents and in some sense trustees for the company. This
of their
It is one
...oln, (1803)
8 Ves. 363, to keep a clear account, and to communicate the contents of it to his principal.—Palmer's *Company Law*, p 222

104 The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

Notes—A director by virtue of his office has the right to inspect the accounts of the company. (1890) W. N. (Eng.) 209. This right of inspection ceases on voluntary winding up. *Yorkshire & Co*, 9 Eq 650 ; *Kent Coalfields Syndicate*, (1898) 1 Q B 754.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

Notes—The right of inspection of accounts and books of the company is not a statutory right. This article does not prevent a shareholder to inspect the register of members, or the register of mortgages, for a member has statutory right to inspect them Palmer's *Company Law*, p. 222.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

107. The profit and
venient heads, the amount
which it has been derived
the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

108. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. *The balance-sheet shall be accompanied by a report of* the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund.

109. A copy of the balance-sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

110. The directors shall in all respects comply with the provisions of sections 130 to 135 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force.

Audit.

111. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force

Notices.

112. (1) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address or (if he has no registered address in British India) to the address, if any, within British India supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Notes.—The notice must be given to every member within reach. *Smith* v. *Darley*, (1849) 2 A. L. C. 789 Where a member's whereabout is not known, notice may not be given *Halifax Sugar Co* v. *Franklyn* (1800) 59 L. J Ch. 591; *Portuguese Consolidated Copper Mines* (1886) 42 Ch D 160; *Union Hill Silver, Co.* (1870) 22 L. T. 400. In the absence of any special provision non-service of notice on a single member will invalidate a meeting *British Sugar Refining Co*, (1857) 3 K. & J. 408. Notice is to be given only to members on the register *Sussex, Brick Co*, (1904) 1 Ch. 598.

113 If a member has no registered address in British India, and has not supplied to the company an address within British India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

Notes.—Where notice is by advertisement, this would appear apart from special provision to be the rule *Mercantile Investment and General Trust Co* v. *International Co*, *of Mexico*, (1893) 2 Ch. 484 N—Stiebel, p 388. No notice need be given to shareholders who live abroad. 22 L. T. 400

114. A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

Notes.—In the absence of such a provision in the articles, such a notice is not sufficient. *Cf. Patentwood Keg Syndicate* v *Pearse*, (1906) W N. 164.

115. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of repre-
[illegible] description,
[illegible] y the persons
[illegible] supplied) by
giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

Notes.—These persons are not entitled to any notice in the absence of such an article. (1909) 1 Ch. 656; (1896) 1 Ch. 456; (1894) 1 Q. B. 622.

in consequence of the death or insolvency of a member, who but for his death or insolvency, would be entitled to receive, notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

TABLE B.

(See sections 249 and 262).

TABLE OF FEES TO BE PAID TO THE REGISTRAR.

I.—By a company having a share capital.

	Rs.	A.	P.
1. For registration of a company whose nominal share capital does not exceed Rs. 20,000, a fee of	40	0	0
2. For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)—			
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees	20	0	0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 10,00,000 rupees	5	0	0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 10,00,000 rupees	1	0	0
3. For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration :			
Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.			
4. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company			
	3	0	0
to be recorded by the registrar, a fee of	5	0	0

II.—By a company not having a share capital.

1. For registration of a company whose number of members, as stated in the articles of association, does not exceed 20 ...	40	0	0
	100	0	0
	400	0	0

* *Vide the Gazette of India*, dated the 22nd July, 1916, Part I, p. 997.

Rs. A. P.

5. For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable (in respect of such increase)* if such increase had been stated in the articles of association at the time of registration :

Provided that no one company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the company.

Act or rules made thereunder, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement

winding up 3 0 0

rised or requir-

... 5 0 0

THE SECOND SCHEDULE.

(See section 98).

STATEMENT IN LIEU OF PROSPECTUS.

filed by

LIMITED

pursuant to section 98 of the Indian Companies Act, 1913.
Presented for filing by

THE INDIAN COMPANIES ACT, 19 .

LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal share capital of the company	Rs.
Divided into	shares of Rs. each. " " " "
Names, descriptions and addresses of directors or proposed directors and of the managers or proposed managers.	
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of Rs. fully paid.
The consideration for the intended issue of those shares and debentures.	2. shares upon which Rs. per share credited as paid. 3. Debenture Rs. 4. Consideration.

* *Vide the Gazette fo India*, 1917 Pt. I, p. 1787.

† *Vide the Gazette fo India*, dated the 22nd July 1916, Part I, p. 997.

THE SECOND SCHEDULE—*Continued.*

The nominal share capital of the company	Rs.
Names and addresses of * vendors of property purchased or acquired, † or proposed to be purchased or acquired by the company	
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price ... Rs. Cash ... " Shares ... " Debentures... " Goodwill ... Rs.
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company or ... ... Rate of the commission	Amount paid. " payable. Rate per cent.
Estimated amount of preliminary expenses	Rs
Amount paid or intended to be paid to any promoter. Consideration for the payment.	Name of promoter Amount Rs Consideration :—
Dates of, and parties to every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any)	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a ... be paid to him or to any person either ... tim as a director, or ... or by the firm in ... n of the company.	

* For definition of vendor see section 94 of the Indian Companies Act, 1913.
† See section 95 of the Indian Companies Act, 1913.

THE SECOND SCHEDULE.—*continued.*

The nominal share capital of the company	Rs.
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance-sheets or reports of the auditors or other reports.	Nature of the provisions.

(Signature of the persons above-named as directors or proposed directors, or of their agents authorised in writing).

———————

———————

———————

THE THIRD SCHEDULE.

FORM A.

(*See sections 6 and 151*)

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st.—The name of the company is "The Eastern Steam Packet Company, Limited"

2nd—The registered office of the company will be situate in the province of Bombay.

3rd—The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th—The share capital of the company is two hundred thousand rupees, divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of subscribers	Number of shares taken by each subscriber.
1. A. B. of, merchant	200
2. C D. " "	25
3. E. F. " "	30
4. G. H. " "	40
5. I. J. "	15
6. K L. " "	5
7. M. N. " "	10
Total shares taken ...	325

Dated the day of 19 .

Witness to the above signatures . X. Y. of .

FORM B.

(*See Sections 7 and 151.*)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Mutual Calcutta Marine Association, Limited."

2nd.—The registered office of the company wil be situate in Calcutta.

4th.—The liability of the members is limited

5th—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among

one hundred rupees.

subscribed, are desirous

andum of association.

Names, Addresses and Descriptions of Subscribers.

"1 A B. of
"2. C. D. of
"3. E. F. of
"4. C. H. of
"5 I. J. of
"6. K L. of
"7. M. N of

Dated the day of .
Witness to the above signatures. X. Y. of .

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

Number of Members.

1. The company for the purpose of registration is declared to consist of five hundred members

2. The directors hereinafter mentioned may, whenever the business or the association requires it, register an increase of members.

Definition of Members.

3 Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of

in the month next

inner as nearly as

dinary meetings ;

7. The directors may, whenever th

in writing by any five or more members,

8. Any requisition made by the

proposed to be called, and must be

the registered office of the company.

Proceedings at General Meetings.

10. Fourteen day's notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

by rotation, and the fixing of remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say) :—if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members with this limitation, that no quorum shall in any case exceed ten.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if called on the requisition of the members, shall be dissolved: in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was damanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he ... ote by his committee or other

... ing unless all moneys due

... or by proxy: Provided that ... of its directors in accordance ... nies Act, 1913, is in force. A ... of the appointor, or, if such

23. (1) No person shall act as a proxy unless he is a member, or unless he is

... registered office of ... holding the meeting

24. Any instrument appointing a proxy shall be in the following form :—

Company, Limited,

I, , of , being a Member of the Company, Limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary or

extraordinary, as the case may be] general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this day of .

Directors.

25. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall, for all the purposes of the Indian Companies Act, 1913, be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Indian Companies Act, 1913, or by any statutory modification thereof for the time being in force, or by these [illegible] ; but no regula- [illegible] -ior act of the [illegible] made.

Elections of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

(Here insert *rules as to mode in which business of insurance is to be conducted.*)

Audit.

[illegible]

Notices.

30. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names Addresses and Descriptions of Subscribers.

"1. A. B of
"2. C. D of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the day of 19 .

Witness to the above signatures.

X. Y. of

FORM C.

(*See sections 7 and 151.*)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Snowy Range Hotel Company, Limited."

2nd.—The registered office of the company will be situate in the province of Bengal.

4th.—The liability of the members is limited.

5th —Every member of the company undertakes to contribute to the assets of the company
year afterwa
before the ce
up the sam
themselves,

6th.—The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of Subscribers.	Number of shares taken by each Subscriber
"1 A. B. of	200
"2. C. D. of	25
"3. E. F. of	30
"4. G. H. of	40
"5. I. J. of	15
"6. K. L. of	5
"7. M. N. of	10
Total shares taken ...	325

Dated the *day of* *19* .

Witness to the above signatures.

X. Y., of

Articles of Association to accompany preceding Memorandum of Association.

1. The share capital of the company is five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the company in general meeting,

company in general meeting, can-

...panies Act, 1913, shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of , merchant.
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the *day of* *19* .

Witness to the above signatures.

X. Y., of

FORM D.

(See sections 8 and 151).

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Patent Stereotype Company."

2nd.—The registered office of the company will be situate in the province of Bombay.

3rd.—The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates of which method P. Q. of Bombay, is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of Subscribers.	Number of shares taken by each Subscriber.
"1. A B of	3
"2. C. D. of	2
"3 E. F of	1
"4 G H. of	2
'5. I. J. of	2
"6 K L. of	1
"7. M. N of	1
Total shares taken ...	12

Dated the *day of* *19* .

Witness to the above signatures.

X Y, of .

Articles of Association to accompany the preceding Memorandum of Association

1. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each

2. All the articles of Table A of the Indian Companies Act, 1913, shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

"1. A B. of , merchant
"2. C. D. of
"3. E F. of
"4 G H. of
"5. I J. of
"6. K. L of
"7. M N. of

Dated the *day of* *19* .

Witness to the above signatures.

X. Y, of .

FORM E.

AS REQUIRED BY PART II OF THE ACT.

(See Section 32)

Summary of Share Capital and Shares of the Company, Limited, made up to the day of 19 (being the day of the first ordinary general meeting in 19).

Nominal share capital Rs. divided into* { shares of Rs. each. / shares of Rs. each

Total number of shares taken up*to the day of 19 which number must agree with the total shown in the List as held by existing members.

Number of shares issued subject to payment wholly in cash.

Number of shares issued as fully paid up otherwise than n cash.

Number of shares issued as partly paid up to the extent of per share otherwise than in cash.

† There has been called up on each—of shares Rs.

There has been called up on each—of shares Rs.

There has been called up on each—of shares Rs.

‡ Total amount of calls received, including payments on application and allotment. Rs.

Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash. Rs.

Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share. Rs.

Total amount of calls unpaid. Rs.

Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary Rs

Total amount (if any) paid on shares § forfeited. ... Rs.

Total amount of shares and stock for which share-warrants are outstanding. Rs.

Total amount of share-warrants issued and surrendered respectively since date of last summary. Rs.

Number of shares or amount of stock comprised in each share warrant. Rs.

Total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act. Rs.

List of Persons holding s'
of 19 , and of
the date of the last return, sh
shares so held.

---

* When there are shares of different kinds or amounts, (*e. g*, Preference and Ordinary or Rs. 200 or Rs. 100) state the numbers and nominal values separately.

† Where various amounts have been called or there are shares of different kinds, state them separately.

‡ Include what has been received on forfeited as well as on existing shares,

§ State the aggregate number of shares forfeited,

	NAMES, ADDRESSES AND OCCUPATIONS.				ACCOUNT OF SHARES.					
						§ Particulars of shares transferred since the Date of the last Return by Persons who are still Members		§ Particulars of shares transferred since the Date of the last Return by Persons who have ceased to be Members.		
Folio in register ledger containing particulars.	Name in full.	Father's name.	Address.	Occupation or caste.	* Number of shares held by existing Members at date of return.	Number †	Date of Registration of Transfer.	Number ‡	Date of Registration of Transfer.	REMARKS.

Names and addresses of the persons who are the Directors of the Limited, on the day of 19 .

Names.	Addresses.

Names and addresses of the persons who are the managers of the Limited, on the day of 19 .

Names,	Addresses.

nctive numbers, must be
s to make one total to

may be sub-divided so
own separately.
1 as well as the number
of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the remarks column immediately opposite the particulars of each transfer.

NOTE.—Banking companies must add a list of all their places of business.

I, , do hereby certify that the above list and summary truly and correctly states the facts as they stood on day of 19 .

(Signature)

(State whether director, manager or secretary.)

FORM F.

(*See section* 132.)

LIMITED.

Balance-sheet as at 19 .

CAPITAL AND LIABILITIES.	Rs.	As.	P.	Rs.	As.	P.
CAPITAL—						
Authorised Capital.........shares of Rs..... each.	...	...	...			
Issued Capital...shares of Rs.........each.	...	...	...			
Subscribed Capital......shares of Rs.......each.	...	...	...			
Amount called up at Rs.......per share.	...	...	...			
Less—Calls unpaid...	...	...	...			
Add—Forfeited shares (amount paid up.)	...	...	...	...	...	...
RESERVE FUND OR DEVELOPMENT FUND				...	...	...
ANY SINKING FUND				...	...	...
ANY OTHER FUND CREATED OUT OF NET PROFITS				...	...	...
ANY PENSION OR INSURANCE FUND ...				...	...	...
PROVISION FOR BAD AND DOUBTFUL DEBTS ...				...	...	...
LOANS ON MORTGAGE OR MORTGAGE DEBENTURES BONDS.				...	...	...
LOANS OTHERWISE SECURED ... ... (Stating the nature of security)				...	...	...
LOANS UNSECURED.						
INTEREST				...	...	...
... ..				...	...	...
LIABILITIES				...	...	...
For Goods supplied	...	...	...			
" Expenses	...	...	...			
" Acceptances	...	...	...			
" other Finance	...	..	...			
ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS (For the portion for which value has still to be ... asses of ... Theatre,				...	...	...
PROFIT AND LOSS	.			...	...	...
Balance as per previous Balance-sheet. ...	...	...	...			
Less—appropriation thereof	...	...	...			

CAPITAL AND LIABILITIES.	Rs.	A.	P	Rs.	A.	P.
Balance brought forward	...	...	...			
Profit since last Balance-sheet ...	...	...	...			
(N. B—These details need not be given if the same be contained in a Profit and Loss account attached to the Balance-sheet).						
				...	...	...
CONTINGENT LIABILITIES—						
Claims against the Company not acknowledged as debts	...	...	...			
Moneys for which the Company is contingently liable	..	...	...			
Arrears of Cumulative Preference Dividends ...	...	...	...			
PROPERTY AND ASSETS.						
FIXED CAPITAL EXPENDITURE				...	...	...
(Distinguishing as far as possible between expenditure upon goodwill, land, buildings, leaseholds, railway sidings, plant, machinery, furniture, development of property, patents, trademarks and designs, interest paid out of Capital during construction, etc, and stating in every case the original cost and the total Depreciation written off under each head)						
PRELIMINARY EXPENSES				...	...	...
COMMISSION OR BROKERAGE				...	...	...
(Commission or Brokerage paid for under-writing or placing shares or debentures until written off).						
STORES AND SPARE GEAR						
LOOSE TOOLS				...	...	...
LIVE STOCK				...	...	...
STOCK IN TRADE				...	...	...
(Stating mode of valuation, *e. g.*, cost or market-value).						
BILLS OF EXCHANGE				...	...	...
BOOK DEBTS				...	...	...
(Distinguishing in the case of a Bank between those considered good and in respect of which the Bank is fully secured and those considered good for which the Bank holds no security other than the debtor's personal security, and distinguishing in all cases between debts considered good and debts considered doubtful or bad. Debts due by direc- ... ny of per-						
ADVANCES				...	...	...
(Recoverable in cash or in kind or for value to be received, *e.g.*, Rates, Taxes, Insurance, etc.)						
INVESTMENTS				...	...	...

PROPERTY AND ASSETS.	Rs.	As.	P.	Rs.	As.	P.
(Nature of Investment and mode of valuation *e g*, cost or market-value).						
INTEREST ACCRUED ON INVESTMENTS.				...	...	...
CASH AND OTHER BALANCES						
Amount in hand	...	...	...			
Balances with Agents and Bankers (in detail showing whether on deposit or current account etc).	...	...	...			
Profit and Loss (giving, in the case of a debit balance, details as far as possible as in the case of a credit balance).				....	....	....

FORM G.

(*See Section 136.*)

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES.

* The share capital of the company is Rs. divided into shares of Rs. each.

The number of shares issued is . Calls to the amount of Rs. per share have been made, under which the sum of Rs has been received.

The liabilities of the company on the thirty first day of December (or thirtieth of June) were :—

Debts owing to sundry persons by the company .
Under decree, Rs.
On mortgages or bonds, Rs.
On notes, bills or hundis, Rs
On other contracts, Rs.
On estimated liabilities, Rs.
The assets of the company on that day were :
Government Securities (stating them), Rs
Bill of exchange, hundis and promissory notes, Rs.
Cash at the Bankers, Rs.
Other securities, Rs.

THE FOURTH SCHEDULE.

(*See section 290*)

ENACTMENTS REPEALED

1	2	3	4
Year.	No.	Subject or short title	*Extent of repeal.*
1882 ...	VI.	The Indian Companies Act, 1882.	So much as has not been repealed.
1887 ...	VI.	The Indian Companies Act, (1882) Amendment Act, 1887.	The whole
1891 ...	XII.	The Amending Act, 1891.	So much of the Second Schedule as relates to the Indian Companies Act, 1882.

* If the Company has no capital divided into shares the portion of the statement relating to capital and share must be omitted.

1	2	3	4
Year.	No.	Subject or short-title.	Extent of repeal,
1895 ...	XII	The Indian Companies (Memorandum of Association) Act, 1895	The whole.
1899 ...	IX.	The Indian Arbitration Act, 1899.	The second proviso to section 3 relating to the Indian Companies Act, 1882.
1900 ...	IV.	The Indian Companies (Branch Registers) Act, 1900.	The whole.
1910 .	IV	The Indian Companies (Amendment) Act, 1910.	The whole.

THE CONTEMPT OF COURTS ACT, 1926.

ACT NO XII OF 1926.

RECEIVED THE ASSENT OF THE G. G. ON THE 8TH MARCH 1926.

An Act to define and limit the powers of certain Courts in punishing contempts of Courts.

WHEREAS doubts have arisen as to the powers of a High Court of Judicature to punish contempts of subordinate Courts;

And whereas it is expedient to resolve these doubts and to define and limit the powers exercisable by High Courts and Chief Courts in punishing contempts of Court; It is hereby enacted as follows:—

Notes.—"The several High Courts of Judicature established by Letters Patent are superior Courts of record, and as such they have power to attach and commit for acts amounting to contempt of their own proceedings as contempt of Court, and without reference to whether the acts alleged constitute an offence under the Indian Penal Code Different views have, howevever, been held by the various High Courts
for such contempts committed in regard to pro-
-rdinate to them The Madras High Court in the
L. J. 832 and the Bombay High Court in the case
-irni, 24 B L R. 16, have held that they possess
-dinate Courts against such contempts The Calcutta High Court on the other hand, in the matter of *Amrita Bazar Patrika*, 17 C. W. N. 1285 and the *Legal Remembrancer* v. *Moti Lal Ghose*, 4 Cal. 173 has taken a contrary view. In cases in which it is held that the power to attach and commit exists, the powers of the Courts are as unrestricted as are the powers of superior Courts of record in England. It has not been decided whether the Court of Judicial Commissioners of the Central Provinces, Oudh and Sindh have these general powers either in regard to contempt of their own proceedings or of the superior Courts of record to attach and commit for contempt of Court; contempts of Courts are also indictable misdemeanours at common law. In India, on the other hand, though the Indian
Penal C[illegible] Court in
Englan[illegible] -ment of
contem[illegible]
marised above has long been
-oduced in the Indian Legisla-
cases of contempts of Courts
e, but it was not proceeded
declare and amend the law in other lines. Instead of increasing the classes of cases punishable as contempts of

Court after trial by Magistrates, the Bill restricts the power to protect subordinate Courts against contempts which are not already provided for in the Indian Penal

ment of Objects and Reasons.

Short title, extent and commencement.

1. (1) This Act may be called the Contempt of Courts Act, 1926.

(2) It shall extend to the whole of British India.

(3) It shall come into force on such date as the Governor General in Council may, by notification in *the Gazette of India*, appoint.

Power of superior Courts to punish contempts of Court.

2. (1) Subject to the provisions of sub-section (3), the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to them as they have and exercise in res

(2) Subject to the provis and exercise the same jurisdictio . the same procedure and practice. Court referred to in sub section (1).

(3) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.*

Notes.—A contempt of Court contemplated in this section is a criminal offence and no person can be punished for it, unless that offence be proved by legal evidence. *In re Pollard*, L. R. 2 P. C. 106=5. Moo. P. C. N. S. 111. A state- not legal evidence. *The Queen* v. *The* criminal proceeding need not deny that

s Bench in England for contempt of , *C. J.* in 17 C. W. N. at pp. 1279=1280

"*Rex* v. *Davis*, L. R. (1906) 1 K. B. 32 came before the old King's Bench Division on a rule for a writ of attachment for contempt of Court This contempt consisted of the publication of articles in a newspaper calculated to give an exceedingly unfavourable impression of a prisoner, who had been arrested and brought before the Magistrate. The publication was made while the case was still before the Magistrate and prior to committal It was held that the High Court had power to attach, first because these might come to the assizes for trial, and secondly, because, even if the committal had actually been made to the quarter session, still the King's Bench Division as the inheritor of all the jurisdictions and powers of the Court of the King's Benches possessed the summary power of punishment. It was on the second of these two grounds that the Advocate General relied in his opening.

'This phase of *Rex* v. *Davis*, demands close attention in order to see whether it rtain links in that

rited if at all, from ich became amalga- power to commit f Record.

of a very special character and, unless I have misread the judgment, it vested on the Court's power to punish every kind of misdemeanour, in that it was in a special manner the guardian

* XLV of 1860.

and protector of public justice throughout the kingdom, the *custos morum*, a dignity that reverted to it or was revived on the abolition of the Star Chamber by 16 Char. I. c. 10. Ordinarily misdemeanour was punishable by indictment or information, but when it was a contempt of Court it was also punishable *brevi menu* by attachment. When this summary proceeding was first used is in some doubt, but the opinion has been expressed that the earliest instance of its use where the contempt was an attack on a Judge, not in the face of the Court, was in 1720

"The fact that there was one alternative mode of bringing the offender before the Court where the misdemeanour was a contempt of Court was merely a difference of procedure; the subject matter was the same, that is to say, the prosecution of an offence in the Court of King's Bench.

"The helplessness of the inferior Court and its subjection to the superintendence and control of the King's Bench were not the foundation of the jurisdiction, but merely the occasion and the reason for its exercise

...iferior Courts before the *Bazar Patrika*, 17 C. W. N. ...f the old Common Law must,

...nbarrassed was an inferior Criminal Court, unable to protect itself but under the superintendence and control of the Court of King's Bench the case was one in which it would be right that the common law principle should be applied in a summary proceeding.

...on law powers that ..., conduct in relation ...of that Court, such ... LV of 1860?'

Then it was held by His Lordship that neither the Supreme Court nor the Sudder Dewani-Adawlat nor the Sudder Nizamat Adawlat had jurisdiction to commit a person for contempt of a Criminal Court in the Mofussil The Calcutta High Court which has inherited all the jurisdiction and every power and authority in any manner vested in the Supreme Court, the Sudder Dewany Adawlat and the Sudder Nizamat Adawlat, has not derived any such jurisdiction from any of those Courts. *Ib.d*; but see *Re Venkata Rao*, 21 M L J 832 and *King Emperor* v *P G Kulkarni*, 24 Bom. L. R. 16. As person need not be against particular Judge as to particular case. A. I. R. 1935 All. 1. Object is not to vindicate character of particular Judge but to protect administration of justice. *Ibid*, Order of Division Bench that contempt has been committed is final A. I. R. 1935 All. 811 Contempt of High Court can be punished by summary procedure. Contempt can be committed apart from any case in the High Court A. I. R 1935 Cal. 419.

...rd has power to commit for contempt of ... Courts are superior Courts of Records and ... contempt of themselves This section ... for contempts of Mofussil Courts over which the High Court has jurisdiction. This section gives legislative sanction to the decision reported in 21 M. L. J 832 and 24 Bom. L R. 16. So the rule of law laid down in 17 C. W. N. 1253 is no longer the law. Sub-section (2) gives power to ... committed in regard to their own ... subordinate to them By sub-section ... the High Courts of Judicature, the ...efined The publication of *comments* on a case which is pending trial in a Court amounts to a contempt of Court if the comments are such as are likely to prejudice the administration of justice in the case. 29 C. L J. 565. Applications for contempt cannot be subject matter of reference by the Lower Court to the High Court. Such application can be heard by a Bench of the High Court hearing criminal appeals unless they are specially referred to by the ... procedure in cases of contempt of ... Comments are not permissible when ... 790=1933 Cr. C 134=37 C. W. N. ... Cal. 118. High Court has power to ... I. R. 1933 Pat. 204=14 P. L. T

77=12 Pat. 172; see also 144 Ind. Cas. 351=12 Pat. 1=34 Cr. L. J. 770=14 P. L. T. 605=A. I R. 1933 Pat. 142; A. I. R. 1933 Cal 118=37 C. W. N. 276=60C. 603=34 Cr. L. J. 662. The expression "man in the street has lost confidence in the administration of justice in the province" is contempt of Court.
725=A. I. R. 1933 Oudh 118.
ything not specifically set out in
901=35 C. W. N. 1267=33 Cr.
mpt the moffussil Courts has no
High Court by party aggrieved.
J. 444=A. I. R. 1932 Cal. 254.
er 10 Penal Code, are excluded
from the purview of the Act A. I R. 1932 Cal. 705=36 C W. N. 645=33 Cr. L. J. 945=140 Ind. Cas. 140. A notice of motion for contempt is a proceeding of a criminal nature, and it is obligatory on the party applying to the Court to state the precise acts complained of in the notice. 36 Bom L. R. 992=A. I. R. 1934 Bom. 452. The editors of newspapers incur great risk in publishing abstract of plaint in newspaper. A. I. R. 1934 Cal 606=38 C. W. N 330=152 Ind. Cas. 900. Sub-section 2 (3) means that act constituting an offence against Penal Code may well be punished under the Penal Code. 12 Pat. 172=14 P. L. T. 77=A. I. R. 1933 Pat 204 Single act can be offence under Penal Code and may also be contempt of Court *Ibid*, see also 144 Ind Cas 351=12 Pat 1=34 Cr. L. J. 770=14 P. L. T. 605=A I. R. 1933 Pat. 142 Judicial Commissioner's Court is not a Court of Record. It has no power to punish contempt of Subordinate Court. A. I. R. 1935 Nag. 46.

Limit of punishment for contempt of Court

3. Save as otherwise expressly provided by any law for the time being in force, a contempt of Court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Notes.—By this section the unrestricted power of the High Court is limited and the extent of punishment is defined—*Vide Statement of Objects and Reasons.* Where leading advocate commits offence unconsciously, written apology tendered is sufficient amends 144 Ind. Cas 63=1933 Cr. C. 239=34 Cr L. J. 726=A. I. R. 1933 Oudh 118; but see 35 Cr. L. J. 433=A I. R. 1934 All. 317=1934 A. L. J. 145=147 Ind. Cas. 330.

THE INDIAN CONTRACT ACT, 1872.

ACT IX OF 1872.

RECEIVED THE G.-G's ASSENT ON THE 25TH APRIL, 1872.

Preamble.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts: It is hereby enacted as follows:—

Notes—For Statement of Objects and Reasons of the Bill, which was based on a Report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India dated July 6, 1866, see *the Gazette of India*, 1867, Extraordinary p. 39 For the Report of Select Committee, see *Ibid.* 1871, p. 313, and *Ibid*, 1872, p. 527.

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Contract Act, 1872."

Extent. Commencement. It extends to the whole of British India*; and it shall come into force on the first day of September, 1872.

Extent—The Indian Contract Act has been declared in force in—

The Santhal Parganas [*Vide* the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justices and Laws Regulation (III of 1899) s 3]

The Arakan Hill District [*Vide* the Arakan Hill District Laws Regulation (I of 1916) s. 2]

Upper Burma (except the Shan States)—[*Vide* the Burma Laws Act (XIII of 1898) s. 4]

British Baluchistan [*Vide* the British Baluchistan Laws Regulation (II of 1913) s 3]

The Contract Act has been declared, by notification under s 3 (a) of the Scheduled Districts Act (XIV of 1874) to be in force in—

and [illegible]
509).

This Act has been extended by notification under s. 5 of the Scheduled District Act (XIV of 1874) to the whole of Upper Burma except the Shan States (*Vide the Gazette of India*, 1893, pt. II, p. 272)

Contract Act—The Contract [illegible]
21 W. R 352; 5 M I A 452 This [illegible]
L. R. 370 It is an amending a[illegible]
The practice of looking more at [illegible]
words of the section is not correct. *Shaikh Omed Ali* v *Nidhee Ram*, 22 W. R. 367 When on any subject it lays down a law which is at variance with English law, the law laid down in the Contract Act is binding on Indian Courts. 38 Ind. Cas. 915 As regards the application of the English common law customs, *vide* 4 I. A 23 The Contract Act nowhere says anything about the place where the contract is made and it is no part of the ordinary law of contract 58 C. 539= A. I. R. 1931 Cal 659 The principles of the Contract Act are applicable to transfers 25 A L J 708=A I. R. 1927 All 693=103 Ind Cas 310 The rule of estoppel though a rule of evidence is governed by Contract Act. It is doubtful whether s. 115 of the Evidence Act applies to infant 6 Pat. 388=8 P L. T. 730= A. I. R. 1927 Pat 271=102 Ind Cas. 449 The Indian Contract Act is not exhaustive of all cases in which a person under the English law would be taken to have a right of action against another for money paid to his use. 48 B 20=25 Bom L. R. 114= A. I R. 1924 Bom 232=77 Ind Cas 266 Contract Act is not exhaustive 26 C. W. N. 772=A. I R. 1921 Cal. 416=69 Ind. Cas 900; but see 38 Ind. Cas. 915=12 N. L. R. 177. Where agent is authorized to sell by trade usage question as to agent's power to do so is not governed by Contract Act. A. I. R. 1933 Lah. 183= 145 Ind. Cas. 188.

Enactments repealed. * Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Notes—The words "not inconsistent with the provisions of this Act," are not to [illegible]

18 C 620 (P. C.)=18 I. A 121; but see 14 B L R. 76=23 W R 370; 41 B 518 As regards what usages and customs are not affected *vide* 18 C 620; 6 C 1; 9 Ind. Cas. 966, 30 C 530, 18 B 518; 145 Ind Cas 188=A I R 1933 Lah 183. Barrister's profession is not trade 1933 A L J 151 · A I R 1933 All 317 (F B). The general provisions of the Contract Act do not supersede the provisions of a

* Certain words before this repealed by Act X of 1914 have been omitted.

special later enactment such as Bombay Hereditary Office Act. 30 Bom. L. R. 570=A. I. R. 1928 Bom. 201=111 Ind. Cas. 278.

Interpretation-clause

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

(*a*)—When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal :

(*b*)—When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise :

(*c*)—The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promisee" :

(*d*)—When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise ;

(*e*)—Every promise and every set of promises, forming the consideration for each other is an agreement

(*f*)—Promises which form the consideration or part of the consideration for each other are called reciprocal promises .

(*g*)—An agreement not enforceable by law is said to be void :

(*h*)—An agreement enforceable by law is a contract :

(*i*)—An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

(*j*)—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Clause (*a*)—An invitation for offers does not amount to a proposal *Thanawala* v. *Shahzada*, 1 Ind. Cas 325=12 O C 17 ; 65 Ind. Cas. 282 ; 8 Ind. Cas. 601. Plaintiff residing at L wrote to defendant at G asking for quotations for salt and the terms on which it would be supplied. In reply, defendant sent a post card stating his terms and asking plaintiff to wire when he should require salt. Plaintiff wired for one wagon of salt and on a breach arising out of this contract he sued the defendant for damages at L Defendant objected that the contract having been entered into at G the Court at L had no jurisdiction to entertain the suit. *Held* that defendant's postcard was a mere invitation for offers and not a proposal *Held further*, that plaintiff's wire [illegible] the contract was completed by defendant signify [illegible] G. 65 Ind. Cas. 282 ; see also 54 Ind. Cas. 550 , [illegible] auction is an offer. 20 Ind Cas. 970 An offer c. [illegible] *Ibid* ; 31 Ind. Cas. 890 As regards what is a proposal, *vide*, 71 Ind. Cas. 968 ; 13 B. 669 ; 16 M. 283. Offer without acceptance cannot bind transferee. 91 Ind. Cas. 181, Quotation cards are mere invitations for and not offers themselves. A. I. R. 1924 Sind 64=76 Ind. Cas. 353 ; see also 37 M. L J 712=54 Ind. Cas 550. Advertisement is offer capable of acceptance by one fulfilling conditions 23 A. L. J. 655=A. I. R. 1925 All. 539=88 Ind. Cas 908.

Sub-section (b).—An offer is made when, and not until it is communicated to the offeree. *Williams* v. *Carwardine*, 4 B & A. 621. A reward can not be claimed by one who did not know that it had been offered .*Fitch* v. *Snedaker*, 38 N. Y. 248 ; [illegible] the accep- [illegible] , Pollock, p. [illegible] ,ooo paid in [illegible] contained a [illegible] shares in the event of R who was to serve as the company's manager by reason of death, resignation, etc, failing to complete 4 years' service. The company in their minutes recorded resolutions which did not embody this condition and in express

terms spoke of the transaction as a sale of the patent for Rs. 30,000. *Held* that the only contract between R and the company was that contained in the statute and that if this minute incorporated the terms of the letter, it did so in so far only as the letter was not inconsistent with the express terms of the minute 18 C. W. N, 1185 P. C.=24 Ind. Cas. 506=27 M. L. J. 74. Where a contract is made by letters, it is accepted in the place, where the offer is assented to by the promisee. 12 O. C. 17=65 Ind. Cas. 282; see also 6 A. L. J. 223; 27 M. 535. In cases of offers and acceptance by letters the document is to be read as a whole. 20 Ind. Cas. 282. As regards what is an incomplete negotiation *vide* 39 B 529. There cannot be acceptance by conduct, where the work was not done in pursuance of the offer. 19 Ind. Cas 576=11 A. L. J. 489 Mere expression of an intention is not a contract. 20 A 209 P. C Bought and sold notes together may form the contract in accordance with the custom of merchants in Calcutta 17 C. 173. The negotiations preliminary to a conduct are distinguishable from the contract itself. 3 Agra 9.

Sub-section (c)—By this sub-section, the word "promisee" means "the person accepting the proposal" only, unless a contrary intention appears from the context. 4 M. L. T. 335.

Sub-section (d).—Consideration is an act or forbearance, or the promise thereof, which is offered by one party to an agreement, and accepted by the other, as an inducement to the other's act or promise. Pollock's *Contract* p. 10. In *Currie* v. *Misa*, (1875) L. R. 10 Ex. at p. 162, the following definition of consideration was given: "A valuable consideration, in the sense of the law, may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance detriment, loss or responsibility, given, or suffered or undertaken by the other." In this sub section, consideration means an act, abstinence or promise made by the promisor or some other person at the desire of the promisor. Where the promisee did not do anything at the request of the maker of the hand-note, the promissory note is not supported by consideration so far as the maker is concerned 5 Ind. Cas. 757=20 M L. J 144. Services previously rendered at the desire of a promisor are by this sub-section placed on the same footing with services to be rendered in the future, and constitute a good consideration for a definite agreement. 20 B. 755. Transfer by mother-in-law in lieu of her daughter-in-law's gown is consideration. A. R. 1930 All 434=124 Ind. Cas 183 Compromise of *bonafide* dispute is consideration. 116 Ind. Cas. 646; see also 116 Ind. Cas 719=5 P. L. T. 375=A. I. R. 1924 Pat. 736=84 Ind Cas 208; 90 Ind Cas. 766=2 O. W. N. 849=A. I R. 1926 Oudh 22; 93 Ind. Cas 454=5 P. L T. Sup. 1; A. I R 1933 Lah 121=34 P. L. R. 663. Where the plaintiff is not acting in the *bonafide* belief of true claim, forbearance to sue is no consideration. 11 L. L. J 99=A. I. R 1929 Lah 689=118 Ind Cas. 646 Forbearance to continue prosecution is a good consideration 53 C 51=42 C. L. J. 90=29 C. W. N. 855=A. I R. 1926 Cal 59=89 Ind. Cas 200; see also 32 Ind. Cas 416; 65 Ind. Cas 52=A I. R. 1922 Lah. 269 Time-barred debt can form sufficient consideration. 1929 A. L. J 1132=A I R. 1929 All. 657=122 Ind. Cas. 60; 78 Ind Cas. 106=A. I. R 1927 Oudh 267 Agreement to adopt is consideration 24 A. L J. 185=A. I. R. 1926 All. 194=90 Ind. Cas 1000. Where money paid for making ornaments has not been
returned and the goldsmith with [illegible]
bearance from being sued, the har [illegible]
L. R. 709=A. I. R. 1928=Bom [illegible]
Insurance broker undertakes to pay [illegible]
I. R. 1926 Bom. 82=91 Ind. Cas 419. [illegible]
by consideration. Forbearance to sue on bond is consideration for execution of fresh
bond. A. I. R, [illegible] to one out of
several joint p[illegible] ag. 149=89 Ind.
Cas. 819 Abs[illegible] 47 A. 637=23
A L. J. 561=[illegible] 768; A. I. R.
1931 All. 756. [illegible] 791=20 M. L.
[illegible] 760. Alteration of position of one
[illegible] C. L. J 67=A. I. R. 1925 Cal. 94=84
[illegible] larger sum than what he received,
[illegible] to pay entire sum. 27 O. C 4=10
[illegible] Cas 213 Money received when a
[illegible] person when major and competent to
contract. 46 A 568=22 A L. J. 461=79 Ind Cas. 945; 1933 A. L J. 1399=A. I. R. 1933 All. 659. Detriment suffered on faith of promise is consideration.

principal debtor is good considera-
. J. 235=31 Ind. Cas. 29. Where
r object of transfer, the transfer is
void. Immoral consideration cannot become innocent by passage of time 35 Bom L R 345=A I. R 1933 Bom. 209. In order to create a valid contract there must be consideration and if a debtor pays his creditor some portion of the amount which is due, that payment cannot amount to consideration. The mere fact that the Civil Procedure Code casts upon the decree-holder a duty of certifying any such payment would not amount to consideration for the mere re-
A. L. J. 670. This
in English law 41 C.
. promise with referercе
to which it is a consideration. 16 M. L J. 422 A gratuitous promise made without consideration is not enforceable *Cottage Street Church*, 121 Mass, 528 ; *Re. Hudson, Creed* v. *Henderson*, 54 L J Ch. 811 ; 36 A. 268=12 A. L. J. 351. But a contract may arise where a subscriber authorises a definite expenditure which is incurred in reliance on his making it good

consideration 1925 Oudh 27. Past cohabitation between a man and a woman can
need not be adequate to
e law Anson on Contract
J said : 'Its adequacy is
eement, nor for the Court
. *Firmstone*, 8 A & E. 743 ;
Haigh v. *Brooks*, 10 A & E 309 A promisee's act by which a third party is benefited is a sufficient consideration 22 C W N. 188 ; see also 89 Ind Cas. 1819 The abandonment of a claim is a good consideration 20 C. W N. 210 ; see also 72 Ind. Cas 95 ; 44 M. L J 240 ; 48 M L J 721 : 89 Ind Cas. 174 ; 20 C. W. N. 680 ; 46 Ind Cas. 19 ; 88 Ind Cas 768 : 51 Ind Cas. 963 ; 65 Ind. Cas. 52 ; 58 Ind. Cas. 30 ; 17 Ind Cas 466 ; 74 Ind Cas 316 A consideration must be good and valuable. 25 Ind Cas 720 "Consideration means something of some value in the eye of the law, moving from the plaintiff" *Thomas* v *Thomas*, 2 Q B. 851. Forbearance to sue is a sufficient consideration 32 P L R 627 : 134 Ind Cas 1105 ; 134 Ind.
reement to re convey
All 113 The defini-
wider than under the
=A I. R. 1934 Cal.
1934 All. 271.

B. 449.
that the
that he
has a fair chance of succ
and his
person
ht of action and the other
an action he escapes the
person made a claim which
he knew to be unfounded and, by a compromise, derived an advantage under it ; in that case his conduct would be fraudulent." So the existence of a *bona fide* dispute is a good and sufficient consideration to support a contract even though the claim which caused the dispute turns out afterwards to have no foundation. 90 Ind. Cas. 766 ; see also 58 Ind. Cas 734 ; 54 Ind Cas. 325 ; 1925 Pat 68.

Clause (f).—Clause (f) contemplates contracts which are voidable and not otherwise. A. I. R. 1933 Sind 207. A contract by a public body is not in conformity with the requirements of statute is not a "voidable Contract Act" within clause (f).
3=A. I R 1934 Bom. 277. "Voidability" does
A. I. R. 1929 Sind 83=118 Ind. Cas. 220.
if not for justifiable necessity and is valid where
such necessity exists. 1923 M. W. N. 602=28 M. L. W. 634=A. I. R. 1928 Mad. 936=112 Ind. Cas. 553.

CHAPTER I.

Of the Communication, Acceptance and Revocation of Proposals.

Communication, acceptance and revocation of proposals.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party *proposing*, *accepting* or *revoking* by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Notes—An offer or its acceptance or both may be made either by words or conduct Anson, p 28. A common illustration is afforded by the sending of goods, and their use or consumption by the person to whom they are sent. The sending is the offer, the use or consumption is the acceptance, importing a promise to pay the price. *Ibid* citing *Hart* v *Mills*, 15 M. & W. 87 ; see also *Paynter* v. *Williams*, 1 C & M. 810 The communication takes place when it is brought to the knowledge of the person to whom it is made. *Taylor* v. *Laird*, (1856) 25 L. J Ex. 329 ; *Richardson* v. *Rowntree*, (1894) A. C. 217. An offer must be made with the intention of creating legal relations, 23 B 420 So a mere invitation to a dinner is no offer. *Ibid*, "Where a relation exists between two parties which involves the performance of certain duties by one of them, and the payment of reward to him by the other, the law will imply or the jury may infer a promise by each party to do what is to be done by him." *Morgan* v. *Ravey*, 30 L. J. Ex 131. Commission agent sending out his terms or quotations to the people ; no contract arises on such letter. 137 Ind. Cas. 381=34 Bom. L. R. 236=56 B. 324=A. I. R. 1932 Bom. 291

Communication, when complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor ,

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it ;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(*a*) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(*b*) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete,

[illegible] by A.

[illegible] ...en the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him

Notes—Under this section, the communication of acceptance is complete as against the proposer, only when it is put in a course of transmission to him ; and communication to a proposer contained in a letter not proved to have been correctly addressed to him, could not although posted be said to have been "put in a course of transmission" to him within the meaning of this section 9 A 369=A W. N. (1887) 34. An acceptance is made in the place where the letter accepting the offer is finally posted 6 A L. J 63=1 Ind. Cas 77 ; see also 76 P. R. 1896 , 145 Ind. Cas. 998=1933 M W. N. 937=65 M L J 455=A. I R 1933 Mad 764. An offer by letter is made at the place where it reaches the acceptor. 54 Ind. Cas. 550. Where a document contains a request to borrow a certain sum of money on

certain conditions, it is not an unconditional undertaking to pay, but constitutes only a proposal under this section, 13 B. 669 Offer by letter is complete when letter is delivered at addressee's residence A. I. R. 1927 Lah. 50=98 Ind. Cas 902. Optional clause in acceptance is counter offer and acceptance is not complete. 57 Ind. Cas. 971. Contract is made where letter of acceptance is posted A. I. R. 1923 Lah. 427.

Revocation of proposals and acceptances.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but no afterwards

Notes—In the absence of consideration for a promise to keep an offer open for a time, the promise is a *nudum pactum* and may be revoked at any time before acceptance thereof. 2 M. L. J. 57 The contract is made at the place where the letter of acceptance is fir
offer is not commu
Van Tienhoum,
of offer is commu
question in the ne
person who had
tion until he had
offer had not be
principle and pra
offer not known to [illegible]
the footing that the offer and acceptance constitute a contract binding on both parties." According to English law acceptance takes place when a letter is put into the post office. *Henthorn* v. *Fraser*, (1892) 2 Ch 27 (C. A) So a telegram revoking the acceptance would be operative, though it reaches the offeror before the letter.
can be revoked by a telegrom if it reaches
ptance. On his section Mr. Anson says : "What
ace is lost ? Is the proposer to be for ever
bound though the acceptor is free ?"

Revocation how made.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party ;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance ;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Notes—"Acceptance is to offer what a lighted match is to a train of gunpowder. It produces some thing which can not be recalled or undone But the powder may have lain till it has become damp, or the man who laid the train may remove it before the match is applied. So an offer may lapse for want of acceptance or be revoked before acceptance." Anson's Contract, p. 35

Clause (1)—An offer to guarantee moneys to be advanced to a third party on discount, to a certain extent "for the space of twelve calendar months," is countermandable within that time. *Offord* v. *Davies*, 12 C. B. N. S. 748=31 L. J. C. P. 319. Where the defendant offered to purchase a house from the plaintiff, and to

give him six weeks for a definite answer : *Held* that before the offer was accepted, the defendant might retract it at any time during the six weeks. *Routledge* v. *Grant*, 4 Bing. 653. Such revocation is invalid after acceptance. *G. N Ry.* v. *Witham*, 43 L J. C. P. 11 ; *Gretton* v. *Mess* 7 Ch D. 839. Revocation must reach the party before acceptance. *Steimson* v. *Mc. Lean*, 49 L. J. Q B. 701 = 5 Q B. D 346.

Clause (2).—Where a party fixes a time within which an offer is to remain open the offer would lapse after that time. *Dickinson* v *Dodds*, 2 Ch. D 463. An instance of an offer lapsing by the efflux of a reasonable time is supplied by the case of the *Ramsgate Hotel Co.* v. *Mantefiore*, L R. 1 Exch. 109

Clause (3).—"It is an undeniable principle of the law of contract that an offer of a bargain by one person to another imposes no obligation upon the former, until, it is accepted by the latter according to the terms in which the offer was made Any qualification of or departure from these terms invalidates the offer unless the same be agreed to by the person who made it" *Eliason* v *Henshaw*, 4 Wheaton, 225.

Clause (4)—The death of either party before acceptance causes an offer to lapse An acceptance communicated to the representatives of the offeror can not bind them. Anson's Contract, p. 35.

Acceptance must be absolute.

7. In order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified ;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise , but if he fails to do so, he accepts the acceptance.

[illegible] unquali- [illegible] loes not [illegible] a pro- [illegible] p. 24. If there is a variation in the acceptance, the acceptance is not an acceptance but a counter proposal, and there is no contract until this counter proposal is, in its turn, accepted by the original proposer. 2 S L R 7. This section lays down that in order to convert a proposal into a promise the acceptance must be absolute and un- [illegible] unless it is agreed to by the person from whom the offer comes In other words an acceptance with variation is no acceptance : it is simply a counter proposal which must be accepted by the original promisor before the contract is made A person making a proposal can not impose on the party to whom it is addressed, the obligation to refuse it under the penalty of imputed assent or attach to his silence the legal result that he must be deemed to have accepted it 24 B 510 = 2 Bom L R. 691 ; see also 54 Ind. Cas. 437 = 18 A. L J [illegible] s. 811 = 92 P. R. 1913 ; 6 A L. J. 213 = 1 Inc [illegible] ; 9 A. L J. 285 , A. I. R 1931 Lah 260 = 134 In [illegible] is made subject to confirmation by mail as usual [illegible] unconditional acceptance and hence no promise. 123 Ind Cas. 838 ; A. I R 1930 Lah. 325 ; but see 120 Ind. Cas. 482 ; 122 Ind Cas 507. A counter offer puts an end to the original offer. 98 Ind. Cas 272 ; see also 18 Ind. Cas. 308 If a contract has to be made out from correspondence between the parties the whole of the correspondence must be taken into consideration. 54 Ind. Cas 550.

Acceptance by performing conditions, or receiving consideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Notes—Acceptance of a proposal may be made without communication by the conduct of the acceptor. 42 A. 187 = 18 A. L J 73 = 54 Ind Cas. 437 ; 113 Ind. Cas. 780 ; 29 C. L. J. 279 (P. C.). A suit for recovery of a reward offered by public advertisement can be founded only on a contract. In order to constitute a contract there

must be an acceptance of the offer, and there can be no acceptance unless there is a knowledge of the offer The performance of the act, however, raises an inference, of acceptance, and a claim for the reward arises on the basis of the reward. *Lalman* v. *Guari*, 11 A. L J. 489 = 19 Ind. Cas. 576.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Promises, express and implied.

Notes—Under this section, an implied contract is as much an agreement between the parties as an express contract and is equally binding. 16 Ind. Cas. 609 ;
reement for payment of fees a
to be fixed by the Court. 25
d interest on sums due under
from long course of dealings
between parties. 55. Ind Cas. 522 = 47 A. 17 P. C. See also 54 Ind. Cas. 437 : 44 B. 474 P C. ; 31 Ind. Cas. 783 ; 9 M. I. A. 256.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS.

10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

What agreements are contracts

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Notes.—The Indian Contract Act so far as it goes, is exhaustive and imperative. This section makes it essential that all contracting parties should be "competent to contract", and expressly provides that a person who, by reason of infancy, is incompetent to contract, can not make a contract within the meaning of the Act. A contract, therefore, entered into with an infant is not voidable but void. 30 C. 539 P. C. = 30 I. A. 114 = 7 C. W. N 441 = 5 Bom. L. R. 421 ; 26 A. 342 ; 130 Ind. Cas. 598 = 33 Bom. L. R. 111 ; A. I R 1934 Rang. 2 ; A. I. R. 1934 Mad. 560. Such a contract cannot be ratified by a minor on attaining majority. 130 Ind. Cas. 598 ;
ur a promissory note has been executed
Sharfath Ali v. *Noor Mahomed*, 2 Bur.
must be gone through in order to create
2 Ind. Cas. 763 In case of fraud, ignorance,
proof of mind accompanying execution.
145 Ind. Cas. 1 = 14 P. L. T. 1 (Sup.) 1 = 12 Pat. 359.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Who are competent to contract.

Notes—A contract entered into with an infant is not voidable but void 30 C. 539 P. C. ; 27 Ind Cas. 733 ; 32 C. L. J. 214 (P. C.) ; 46 Ind Cas. 765 ; 46 A. 568 ; 23 P. R. 1888. A minor is not estopped from pleading his minority. 21 C. W. N. 257 (P. C.) ; see also 9 Ind. Cas. 124 ; 31 A. 21 = 1 Ind. Cas. 704 ; 60 Ind. Cas. 267 ; 54 Ind Cas. 876, 38 M 1071 ; 1924 Lah 294 ; 135 Ind Cas 161 = 35 Bom. L. R. 1313 = 55 B. 741 (F B) ; A. I. R 1933 Mad. 94. But minority must be proved 45. C. 909. P. C. ; 89 Ind. Cas. 108. But there is nothing in law to prevent a sale of immovable property in favour of a minor and the minor can sue for possession of the property as such vendor. 68 Ind. Cas. 197. Once a guardian is appointed by Court the minority continues till the age of 21 and any assent to an alienation by the minor is valueless even though the necessity for a guardian may not have continued. A. I. R. 1931 Lah. 394 ; A I. R. 1931 Cal. 393 = 58 C. 224. In a suit by the plaintiff who was a minor, for the cancellation of a bond executed during minority, he is only entitled to

a decree on his returning the money he got from the defendant but without interest and cost. 9 O. L. J. 404 ; 31 A. 21=1 Ind. Cas. 704 ; 95 P. R. 1883 ; 62 Ind. Cas. 258 ; 19 Ind. Cas. 610=35 A. 370 ; 1 L. L. J. 122 ; 30 C. 539 ; 69 Ind. Cas. 543.

A lease of the property of a minor by a person purporting to act on his behalf, but who is not his certified guardian nor a near relation, is not binding on the minor, unless the lessee can prove that the lease was for the benefit of the minor 63 Ind. Cas. 255. A plaintiff can by a suit set aside his mortgage on the ground of minority by reason of the fact that he practised fraud on the defendant by falsely representing himself to be a major. 62 Ind. Cas 237=14 S L R. 104. In such a case he is not estopped from setting up infancy. 55 B. 741 (F. B) ; 55 M. L. J. 88 (P. C) ; 9 Lah. 701 (F. B) ; 38 M 1071 ; 30 C 539 (P. C.) ; A. I. R. 1930 Mad. 945 ; 122 Ind. Cas. 266 ; 111 Ind Cas 175 ; 32 C W. N 874 (P. C.). 96 Ind. Cas. 893 ; 89 Ind. Cas. 143. Where contract of insurance was entered by guardian of minor in respect of minor's property, minor can sue on such contract. A I. R. 1935 Bom. 353. Contracts by minors are void ; the only ground, on which equity interferes to make a person of full age return money or property which he obtained during minority is fraud 23 Ind Cas 799=26 M L. J 612 ; 25 T. L. R. 265 ; 53 S. J. 243 ; 18 Ch D. 109 ; 29 W. R. 747 ; 50 L J Ch 673 ; 45 L T 193 ; (1913) 2 K B 235 ; 82 L. J K. B. 593 ; 108 L. T. 834 ; 20 Manson 129 ; 99 T L. R. 352 ; 3 De. E & J. (5.) 1257 ; 6 W. R. 640 (Eng.) ; 45 A. 644 ; 85

who owns property, to convey that property to a minor, and the conveyance may be made in the minor's name and will convey a perfectly good title to the minor 18 Ind. Cas 451 ; 24 Ind. Cas. 927 ; 39 Ind. Cas. 44 ; 79 Ind. Cas. 955.

A sale of the property of the minor by a *de facto* guardain is valid, if it is made for the benefit of the minor or because of his necessity. 32 Ind Cas. 638; 26 Bom L. R. 1035. A lunatic is not disqualified from being a transferee of a property. 79 Ind. Cas. 955. A contract by a minor being void cannot be ratified. 53 Ind. Cas. 123 ; 51 Ind. Cas 410.

A lease or mortgage by a minor is void, it is incapable of ratification express or implied by the acceptance of rent by the lessee on attaining majority. A. I R. 1931 Bom 178=33 Bom. L R. 111 ; 58 C. 224=A. I. R. 1931 Cal 393 ; 122 Ind. Cas. 466; 102 Ind. Cas. 449 ; 100 Ind. Cas. 748.

"Law" means law of the land. Contract by barristers for fees is not void, 143 Ind. Cas. 727=1933 A L. J. 151=A I R. 1933 All 417 (F. B) The definition of the word 'laws" in its judicial sense is that "laws" are rules of civil conduct enforced by State. 7 Rang. 677=A. I R. 1929 Rang 354=121 Ind Cas 705

What is a sound mind for the purposes of contracting.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(*a*) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(*b*) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Notes—According to English Law a contract of a lunatic is binding upon him unless it can be shown that at the time of making the contract he was wholly incapable of understanding what he was doing and the other party knew of his condition. Anson on Contract, p. 133. "When a person enters into a contract and afterwards alleges that he was so insane at the time that he did not know what he was doing and proves the allegation, the contract is as binding upon him in every

dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other : or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872.*

Illustrations.

(*a*). A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

B's influence over him

sum for his professional

(*c*) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

Notes—In order to reap the benefit of this section it is necessary for the defence to establish that the executants of a deed were induced to sign it because the plaintiff was in a position to dominate his will and used that position to obtain unfair advantage 90 P. L. R 1901=36 P. R. 1901. In the absence of any plea or evidence that the defendant was in the clutches of an extortionate money-lender, the mere fact that the rate of interest agreed to by him was high was insufficient to raise a presumption of undue influence such as is contemplated in this section. 96 P. R. 1901=151 P L. R. 1901 ; 10 Ind Cas 14=8 A. L. J 407 ; 32 B 208 ; 22 Ind Cas. 406 ; 24 Ind Cas. 67 ; *vide* also 20 M. L J 785 ; 5 O. C. 256 ; 111 P. R. 1908 ; 5 M. L. T. 204 ; 16 C L J. 76 (P. C) ; 11 C. W. N. 249 (P. C) ; 9 Bom. L R. 143=31 B 348 ; 6 Ind. Cas 233 ; 7 A L J 729=7 Ind. Cas 286 ; 12 C W. N 1102 ; 134 P. W. R. 1911 ; 2 P. R. 1902 ; 5 O. C. 307 ; 7 A. L. J. 745=32 A 589=6 Ind. Cas 572 ; 47 Ind Cas 11. In order to avoid a contract on the ground that it was induced by undue influence, two things must be established ; (1) that one of the parties was in a position to do
that he used the position to obtain an unfair
den of proof lies in the first instance on the p
ty proves that the other party was not only in
he can do by establishing the facts mentioned in sub clauses (*a*) and (*b*) of Cl. (2) but that the transaction entered into was also unconscionable, then the burden of proving that the contract was not induced by undue influence is shifted upon the other party. 9 Mys L. J 373.

It is for the person claiming the benefit from the disposition of property by the *pardanashin* lady to establish affirmatively that it was substantially understood by the lady and was really her free and intelligent act. If she is illiterate it must have been read over to her. If the terms are intricate they must have been adequately explained and her degree of intelligence will be material factor, but independent legal advice is not in itself essential 35 C W. N. 633=61 M. L. J. 94 (P. C.) ;

* 1 of 1872.

see also A. I. R. 1931, (P. C) 303=54 C. L. J. 431 ; 60 M. L J. 302=A. I. R. 1931 Mad. 335. Urgent need of money on the part of the borrower does not itself place the lender in a position to dominate his will within the meaning of this section. 17 C. L J. 212. To bring a case within the first clause of this section, it is necessary for the defence to show that an unfair advantage has been obtained over him ; while to bring the case within sub-section 3 he must prove that the transaction is unconscionable ; unless these elements are proved, the mere fact that one of the parties is in a position to dominate the will of the other, does not entitle the latter to free himself from his obligation under the contract *Ibid.* By the amendment of section 16 of the Contract Act, the Legislature intended to embody in that section the rules enforced in this respect by the English Courts of Equity, and among them the rule that a transaction may be so unconscionable and the extortion so great as to be evidence of undue influence. The substituted definition of undue influence includes within its scope cases which did not fall within the section as it originally stood. 36 M. 533 , see also 20 Ind. Cas. 8 Where the parties are at arms length and the party against whom undue influence is pleaded is no in a position to dominate the will of the other party, there can be no undue influence. A. I R. 1932 All. 174.

The amendments in the Indian Law of Contract went further in the direction of relief against harsh and unconscionable bargains than those of English money-lending Act, and the dicta of English Judges under that Act might therefore be accepted. *Abdul Majid* v. *Kherode*, 19 C. W. N. 809. Where pressure for undue influence is non-existent, a suit for refund does not lie. 19 C. W. N. 383 The fact that a compoundable criminal case was pending between the parties and the prosecution was ready to compound the offence and to withdraw the charge if the *kabuliyat* was executed and that the executant was ready to execute it on condition of the withdrawal of the charge, would not lead to the necessary inference that the other side was in a position to dominate the will of the executant and that he used that position to obtain an unfair advantage upon him. 28 Ind. Cas 438. Whether instrument is obtained by undue influence and mis-representation is question of fact. A. I. R. 1935 Bom. 326. The principles followed by Courts of Equity in dealing with transaction resulting through fiduciary relationship, fraud, etc. are equally applicable in India. Where a third party stands in no confidential relation to the promisor or grantor, the onus does not in the first instance be on the former to show that no undue influence was used. It is only when he is found or could be be assumed to have bad notice of the exercise of undue influence by another, or atleast of the circumstances raising a presumption or probability of undue influence, that the onus will be shifted on to him A. I. R. 1935 Mad. 726.

In a transaction where the rate of interest is very high it must be proved that the lender was in a position to dominate the will of the debtor. 10 Ind Cas, 249 : 7 Ind. Cas. 261=32 A. 590 (N) ; U. B R (1897-1901) vol II, 315 ; see also 5 Ind. Cas. 486 ; 148 P. L. R. 1911 ; 28 B. 639 : 25 B 126. Urgent need of money is not by itself sufficient proof that the obligee was in a position to dominate the will of the obligor. 4 S L. R. 276. It cannot be held that a state of fear by itself constitutes undue influence under this section. Assuming a state of fear amounting to mental distress which enfeebles the mind, there must be further action of some kind, the employment of pressure or influence by or on behalf of the other party to the agreement. 22 A. 224. A deed is not void on the ground of undue influence, merely because the deed was executed, while the defendant was under arrest in execution of a previous money-decree. 51 P. R. 1908 The mere fact that one of the parties was in a position to dominate the will of the other will not avoid the contract. 3 S L R. 130=4 Ind. Cas 610. It is incumbent on a party, be he plaintiff or defendant, who seeks to set aside a contract on the ground of undue [illegible] ull particulars of the circumstances on [illegible] 8 O. C 210 Apart from the recent [illegible] give relief from a transaction or contract merely on the ground that it was a hard bargain except perhaps where extortion is so great as to be of itself evidence of fraud. 4 C L. J 1 (P. C.)=28 A. 570 (P. C.) =33 I. A 118. In order to avoid a contract on the ground of undue influence a Court should consider only the terms of this section *Ibid.*

The equitable doctrine of undue influence applies to cases, in which the position of the donor and the donee has been such that it has been the duty of the donee to advise the donor or even to manage his property. In such cases, the Court throws upon the donee the burden of proving that he has not abused his posi- and of proving that the gift made to him has not been brought about by any [illegible]

dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

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Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872.*

Illustrations

(a). A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

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The equitable doctrine of undue influence applies to cases, in which the position of the donor and the donee has been such that it has been the duty of the donee to advise the donor *or even to manage* his property. In such cases, the Court throws upon the donee the burden of proving that he has not abused his position and of proving that the gift made to him has not been brought about by any undue

influence on his part. It is necessary to show that the donor had independent advice, and was removed from the influence of the donee, when the gift was made to him. 29 M. 161 (F. B); see also 11 O. C. 295. The term "unfair advantage" in clause (1) of section 16 is used as meaning an advantage obtained by unrighteous means 9 Bom L. R. 1164=32 B. 37. Plea of undue influence cannot be raised by third party claiming adversely to executant. 136 Ind. Cas. 525=A. I. R. 1931 Sind 78 Strong motive to execute agreement raises no presumption of undue influence A. I. R. 1933 Lah 885=34 P. L. R. 788=144 Ind. Cas. 497; see also A. I. R. 1933 Lah. 682=34 P L R. 844=145 Ind. Cas. 432. Inadequency of consideration has only remote bearing to raise presumption of undue influence. A. I. R. 1932 P C 202 (P. C)=36 C W. N 994=63 M. L. J. 54=33 P. L R. 611; see also A I. R. 1932 Cal. 53=59 C. 613=54 C. L. J. 576=35 C. W. N. 1224. Plea of undue influence must be substantiated by person raising it. To shift onus on other party, party alleging undue influence must prove that other party was in a position to dominate his will and that the transaction on its face is unconscionable. [illegible] 144 Ind. Cas. 673=A I. R. 1933 [illegible] drawn if the transaction is un- [illegible] I. R. 1931 Nag. 63; see also [illegible] W. N. 1129 Acts. of undue [illegible] J. 7 (P. C.)=61 I. A. 224=38 C W. N. 806=59 C. L. J 454=36 Bom. L. R. 652=1934 A L J. 585=1934 M. W. N 647=A I. R. 1934 P. C. 130. Excessive rate of interest can be reduced. A. I. R. 1934 All. 938 A wife does not fall within the class of protected persons in respect of whom in certain relationship there is a presumption of undue influence. A. I. R 1934 P. C 210=151 Ind. Cas. 981=A L R. 1934 P. C. 220=1934 A. L. J. 763=40 L. W. 400. Where it is necessary to prove that the party entering into a transaction had independent advice for the validity of it, it must be established that the independent advice had been given before the transaction, for the question is as to the will of the party at the time of entering into the disputed transaction. Advice given after the event, when the supposed contracting party is already bound, is given under entirely different circumstances with a different position presented to the minds of both the adviser and his client and is therefore of no value. A I R. 1934 P. C. 210; see also 60 C L. J. 25. Where the fact of undue influence was not seriously disputed, burden lay upon him who denies, to show that no undue influence was used and the transaction was made in good faith. A. I. R. 1934 All 507=1934 A. L. J. 817=3 A. W. R. 302. Aged persons especially women diverting property to persons in close communion should be protected under s 16 A. I. R. 1930 Oudh 131=6 O. W. N. 112; see also 20 C. W. N. 957 Bargain being unconscionable it is not in itself sufficient ground for setting it aside 24 O. C. 313=A. I. R. 1921 Oudh 207=65 Ind Cas. 129; see also A. I R 1931 Nag 63; A. I. R 1926 Rang. 208; 48 A. 666. From high rate of interest undue influence is not raised. A. I. R. 1931 Nag. 91; see A. I. R. 1929 Lah. 242; 32 C. W. N. 565 (P. C.); A. I. R. 1927 All. 538; A. I. R. 1925 Nag. 211; whether a transaction is one that should be set aside as inequitable depends upon the circumstances at the time when it is made and not upon subsequent events A I R 1935 Cal. 234. Mere existence of ejectment decree does not make a contract between landlord and tenant voidable under this section. A. I. R. 1935 Lah. 479.

The Indian Contract Act throws upon the person dealing with an expectant heir and in a position to dominate the latter s will the burden of showing that he has not used his position to obtain an unfair advantage The illustrations to an Indian Statute are to be taken as part of the Statute. 23 C. W. N. 233 (P. C).

Undue influence is not established by proof of relations of the parties having been such that the one naturally relied upon the other for advice and that the other was in a position to dominate the will of the first in giving it. To render influence "undue" it must be established that the person in a position of domination has used that position to obtain unfair advantage for himself and so as to cause injury to the person relying upon his authority or aid. It is only when the bargain is with the influencer or brought about by him and is in itself unconscionable that the burden is thrown upon the influencer to establish affirmatively that the other party was scrupulously kept separately advised in the independence of a free agent, 43 M. 546=55 Ind. Cas. 447. (P. C.) The plea of undue influence is not open to a man who, at the time of the transaction in dispute, was of mature age and of some intelligence and who, for some years previously managed his own affairs. 42 A.

922=29 C. W. N. 598=58 Ind. Cas. 845. (P. C). In a case of undue influence active confidence between the person executing a document and the person under whose influence the document is said to have been executed, must be established. 11 L. W. 112.

As regards payment of exorbitant rate of interest, *vide* 56 Ind. Cas. 74 ; 24 C. W. N. 444 ; 54 Ind. Cas. 785 ; 57 Ind. Cas 1004 ; 54 Ind. Cas. 558 ; 1 P. L. T. 34 ; 24 O. C 313 ; 59 Ind. Cas 277 ; 48 C. 93 ; 48 Ind Cas 1=29 C. L. J 165, P. C. ; 51 Ind. Cas. 496 ; 69 Ind Cas 657 ; 74 Ind Cas. 346 ; 72 Ind Cas. 767 ; 74 Ind. Cas. 195 ; 10 O. L. J. 390 ; 1923 Lah. 634 , 13 C. L. J 95 ; 96 Ind. Cas. 413 ; A. I. R. 1926 Cal. 171 , 96 Ind Cas. 684 ; (1924) Lah. 21 ; (1924) P. 71 ; (1924) Oudh 118 , 2 Mys. L. J (B & C) 19 ; 9 O. L J 442 ; 68 Ind. Cas 687 ; A. I. R. 1931 Nag 91.

In respect of a transaction by a *pardanashin* lady it must be shown that the lady had independent advice and sufficient intelligence to understand the relevant and important matters, that she did understand them as they were explained to her

[illegible]

have no power otherwise to reduce the stipulated rate of interest and compound interest. 60 Ind Cas. 282=2 Pat. L. T. 111=5 Pat. L J 744 Urgent need of money on the part of a borrower does not of itself place the lender in a position to dominate his will 48 Ind Cas 32 , 23 C. W. N 690. Where the father is old but capable of exercising independent and intelligent judgment no presumption of undue influence arises. 4 Pat L T 707 ; 74 Ind Cas 517 , 68 Ind Cas. 372. It is not enough to prove undue influence that a vendor of property was in a disturbed state of mind and anxious to dispose of property at the time of sale. 72 Ind. Cas. 1032 ; see also 95 Ind. Cas. 995 ; 96 Ind. Cas. 468 ; A. I. R. (1926) Cal, 455 ; 11 O L J 523 ; 78 Ind Cas. 565 ; 1924 Lah. 337 ; 1 Pat. 263 ; 9 O. L J. 439 ; 66 Ind. Cas. 642 ; 68 Ind. Cas. 597.

Sub-section (2)—Person in fiduciary position obtaining benefit should show that position was not used to obtain benefit. 39 M. L. T. 353=A I. R. 1928 Mad. 6=53 M. L. J 842=106 Ind. Cas 315 Equity gives relief in all cases where domination may be exercised 39 M. L. T. 353=A. I. R. 1928 Mad. 6=53 M L. J. 342=106 Ind Cas 315. Agent is not fiduciary relation to principal. 46 Ind Cas. 738. Where a contract between landlord and tenant contains unconscionable terms presumption is raised of undue influence. 1 Pat. L J. 604=38 Ind. Cas. 235=2 Pat. L W. 415. Where a weak-minded brother executes gift of all property in favour of another brother, deed can be set aside within three years from knowledge of facts 7 O. W. N. 1129=A I R. 1931 Oudh 34=130 Ind. Cas. 119. Where wife is very much younger than husband, it cannot be presumed that she was in a position to dominate will of husband. 1930 A L. J 109=A. I. R. 1930 All. 169=123 Ind. Cas. 369 Creditor is not necessarily in a dominating position 29 C. W. N 1029=A. I. R. 1926 Cal. 455=90 Ind. Cas 463 ; see also A I. R. 1925 Nag 365=88 Ind. Cas. 295 ; 12 O. L. J 379=A I R. 1925 Oudh 535=89 Ind. Cas. 348 , 42 A. 230=18 A. L. J. 100=59 Ind. Cas 20. But creditor lending money to expectant heir is in position to [illegible]

[illegible]

vice does not get fair advantage, compromise is void A I R. 1927 Lah. 547 Urgent need on part of borrower does not of itself place the lender in position to dominate his will. 29 C. L. J. 488=23 C. W. N. 690=49 Ind. Cas. 794 ; see also 79 Ind. Cas. 995 ; 48 Ind. Cas. 32 ; 31 C. W. N 693 (P C.)=A I. R. 1927 P. C 84=101 Ind. Cas. 29 ; A I R 1926 Oudh 502=96 Ind. Cas 536 ; 69 Ind. Cas 697 ; 66 Ind. Cas. 687 ; 69 Ind. Cas 677 ; A. I. R. 1926 Oudh 408=96 Ind Cas. 413 ; A I. R 1927 All. 315 ; 80 Ind. Cas 213 No relief can be granted unless lender has taken unfair advantage of his position. 23 C. W N 130=48 Ind Cas. 933 (P C.). Proof of mere hard terms does not attract operation of s. 16 51 C. L. J 283=A. I R. 1930 Cal. 547 ; see also A. I. R. 1927 Lah. 748=102 Ind. Cas. 283 ; 54 Ind. Cas. 558 ; 47 Ind Cas. 11 ; 50 B. 107. But party in confidential relations obtaining unconscionable terms has to recant necessary implications [illegible] P. C. 139=118 Ind. Cas. 737 ; see also A. I [illegible] 52 M. L. J. 20=A. I. R. 1927 Mad. 255 ; 48 A [illegible] 529 ; 65 Ind. Cas. 380. Onus lies on person [illegible] other to show that he

has not used it to obtain an unfair advantage. 23 C. W. N. 233=21 Bom. L. R. 558 (P.C)=48 Ind. Cas. 1

Sub-section (3)—By this sub-section three matters are dealt with. In the first place the relations between the parties must be such that one is in a position to dominate the will of the other. Once that position is substantiated the second stage has been reached, *viz*, the issue whether the contract has been induced by undue influence. Upon the determination of this issue a third point emerges, which is that of the *onus probandi* the burden of proving that the contract was not induced by undue influence is upon the person who is in a position to dominate the will of the other. 28 C W. N. 834=51 I. A. 1011.

"Fraud" defined.

17. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :—

(1)—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true ;

(2)—The active concealment of a fact by one having knowledge or belief of the fact ;

(3)—A promise made without any intention of performing it ;

(4)—Any other act fitted to deceive ;

(5)—Any such act or omission as the law specially declares to be fraudulent.

Explanation —Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustration.

be unsound. A says in A. relation between the ... he horse is sound." A says nothing. Here A's silence is equivalent to speech.

(*d*) A and B, being traders, enter upon a contract A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

Notes.—Fraud is a false representation of fact, made with a knowledge of its falsehood, or recklessly, without belief in its truth, with the intention that it should be acted upon by the complaining party, and actually inducing him to act upon it. Anson on *Contract*, p. 180. In *Peek* v. *Garney*, L. R. 6 H. L. C. 403, *Lord Cairns* said : "Mere non-disclosure of material facts however morally censurable, however that non-disclosure might be a ground in a proper proceeding at a proper time for *setting aside* an allotment or a purchase of shares, would, in my opinion, form no ground for an action in the nature of an action for misrepresentatio... must, ... artial ... not ... iable ... the ... the ...). 1. ... made, (1) knowingly, or (2) without belief in its truth, or (3) recklessly, and carelessly whether it be true or false" *Per Lord Herschell*, in *Derry* v *Peek*, 14 App. Cas. 374 ; see also 45 A. 624=11 A. L. J. 571=1924 All. 17. Equal means of knowledge is immaterial where there is an express representation, or any thing calculated to deceive or to lull suspicion upon a particular *point* 133 *Ind.* Cas 372=A. I. R. 1931 Mad. 603 (2) Secrecy and haste do not by themselves constitute fraud. A. I. R. 1932 All 5 Fraud must be proved in the making of the contract and not in its performance. 37 B. 158 ; 46 B. 489. This misrepresentation must be a misrepresentation of fact. *Harry* v. *Young*, 1 Yelv. 20 ; *Lindsay* v. *Hurd*, L. R. 5 P. C. at P. 243 ; 20 C. L. J. 424 ; 43 Ind. Cas. 101 ; 17 C. 291 P. C. To make a man liable for fraud, moral fraud must be proved against him. I do not understand

legal fraud ; to my mind it has no more meaning than legal heat or legal cold, legal light or legal shade" *Well* v. *Bell*, 3 Ex D. 249 Fraud may be committed by a party's agent with his connivance. 28 B. 405 ; see also 39 Ind Cas 169 Specific fraud must be pleaded and proved. 10 Ind. Cas. 922 ; see also 25 Ind. Cas. 789. Making promise without intention of keeping is fraud. 51 C. L. J 283=A. I. R. 1930 Cal. 547=126 Ind. Cas 754. Parties to fraud cannot seek Court's assistance. A. I. R 1926 Nag. 259=91 Ind Cas. 1029. Fraud is not to be presumed lightly. Mere suspicion is not enough to establish fraud. There must be circumstances inconsistent with honest dealing. A I R. 1926 Cal. 73=90 Ind. Cas 229. Contract obtained by fraud or cheating is voidable. But where performance has been obtained by fraud or cheating, the contract cannot be avoided. 23 Bom. L. R. 1144=46 B.
[illegible] C. W. N. 479=70 Ind.
[illegible] cent person. It is only
[illegible] d into effect that the
[illegible] .923 All. 164=71 Ind
Cas 273. Wrong belief of one party would not vitiate contract. A I R 1923 Sind 25=82 Ind. Cas 81. Mere silence is not fraud 60 C. 262=A. I. R. 1933 Cal. 366. Allegation of fraud should be made clearly and promptly. *Ibid* Secrecy and haste do not by themselves constitute fraud. A I. R 1932 All 5=53 A. 815. There is no statutory duty on the part of the lessee to disclose to the lessor the real income of the property. 60 C. L. J. 25.

"Misrepresentation" defined

18. "Misrepresentation" means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true ;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him ;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Notes.—There is a difference between misrepresentation or innocent misstatement of fact and fraud or wilful misstatement of fact, Anson, p 156 In *Arkwright* v. *Newbold*, 17 Ch. D. 320. *Cotton L. J* said . "It must be borne in mind that in an action for setting aside a contract which has been obtained by misrepresentation the plaintiff may succeed though the misrepresentation was innocent ; but in an action for deceit, the representation to found the action must not be innocent, that is to say, it must be made either with the knowledge of its being false or with a reckless disregard whether it is or it is not true" "It is fraud in law if a party makes representations which he knows to be false and injury ensues, although the motive from which the representations proceeded may not have been bad." *Per Tidal, C J* in *Foster* v *Charles*, 7 Bing 107 , see 3 B 242 Misrepresentation is a misstatement of facts not known to be false or a nondisclosure of facts not intended to deceive Anson, p 159. Where a person makes a positive assertion relying upon the statement of another, that a certain third party would become a director, he is not warranted in making that assertion within the meaning of section 18 of the Contract Act. 4 C. W. N 370 Silence in some cases may amount to misrepresentation. 42 C. 28=24 Ind. Cas. 193 There is no misrepresentation where the truth can be discovered with ordinary diligence 71 Ind Cas. 161 ; 36 Ind. Cas. 34 ; 38 Ind Cas. 500 "A material misrepresentation though not fraudulent, may give a right to avoid or rescind a contract where capable of such recision." *Per Lord Bramwell*, in *Derry* v *Peek*, 14 App Cas. 347. The principal difference between fraud and misrepresentation is that in the one case the person making the suggestion does not believe it to be true and in the other he believes it to be true. Though in both cases it is a mistatement of fact which misleads the promisor. 53 A. 374=1931 A. L. J 153=A. I R 1931 All. 154. Mistake by innocent misrepresentation justifies repudiation of contract. A I R 1932 Bom. 151(b). A seller professing to be owner though merely lien-holder is guilty of misrepresentation. 122 Ind. Cas 675 The endorsement containing an acknowledgement of full satisfaction of the mortgage when it is not so satisfied amounts in law to misrepresentation. 30 N. L. R. 196=A I. R 1934 Nag. 29 Misrepresentation must be intentional 19 A L. J 147=61 Ind. Cas 74 ; 19 A L. J. 530=63 Ind. Cas. 425. Where a Mitakshara father agrees to sell family property

without necessity alleging that he is the sole owner, he is guilty of misrepresentation. 20 S. L. R. 220=A. I. R. 1927 Sind 219.

Voidability of agreements without free consent.

19. When consent to an agreement is caused by coercion*, fraud, or *misrepresentation, the agreement is a contract* voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position *in which he would have been if the representations* made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering *the truth with ordinary diligence.*

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(*a*) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(*b*) A, by a misrepresentation, leads B erroneously to believe that five hundred ... of the ... After ... epresentation.

(*c*) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage B may either avoid the contract, or may insist on its being carried out and the mortgaged debt redeemed.

(*d*) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(*e*) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Notes.—A misrepresentation should in fact materially induce the contract in order to give a right of avoidance. 31 C L J. 151 If a contract is obtained by

...

Ind. Cas. 817. Illustration (b) is not exhaustive of the class of cases which could

...

he had no means of discovering truth. 140 Ind. Cas. 209=20 N. L. R. 184=A. I. R. 1932 Nag. 148. Contract otherwise valid must be enforced unless relief can be

* In s. 19 the words "undue influence" have been omitted being repealed by the Indian Contract (Amendment) Act (VI of 1899), s. 3.

granted to either party under any other law. 143 Ind. Cas. 409=1932 A L. J. 1021 =54 A 1041=A. I. R. 1933 All. 70. Where agreement has been entered through misrepresentation, promisee can avoid contract, but he cannot sue for damages under s. 19. 140 Ind Cas. 209=28 N L. R 184=A. I. R 1932 Nag 148 Where the misrepresentation or fraud is of such a nature that it did not affect the consent of the party the contract is not voidable under this section 62 Ind. Cas 764. Illustration (*b*) is not exhaustive of the cases falling within the explanation to the section. *Ibid.* In order to enable the Court to set aside a completed transaction, the thing must speak for itself. 96 Ind Cas 468 Where the question is whether a certain statement is a substantive part of a contract or a mere representation, it is essential that the statement should be descriptive of the contract, in order to make it a term of the contract. 29 Ind Cas. 575 In the case of an active misrepresentation knowing the fact to be false as distinct from mere silence or concealment, it is not incumbent upon a party defrauded to establish that he had no means of discovering the truth with ordinary diligence. The words 'fraudulently within the meaning of s 17" as used in s 19 apply exclusively to "silence" and not to misrepresentation 53 A 374=A I R 1931 All 154 This section does not entitle a party to insist on entirely different contract being performed. 119 Ind Cas. 684

The exception to this section applies only to cases where the contracting party might with due diligence, have discovered the misrepresentation before he entered into the contract. 38 Ind. Cas. 500

Para (2).—Whenever consent to a contract is obtained by deceit, the contract is voidable at the option of the party deceived. The other party cannot take advantage of his own wrong. Pollock on *Contract*, p. 503.

Power to set aside contract induced by undue influence

19A.* When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note B, under threat of prosecuting A's son obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside

(*b*) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

Notes—Under second clause the Court is entitled to impose terms and sugges- [illegible] =A I. R. [illegible] of mort- [illegible] the mort- [illegible] f mortgage [illegible] not open to a transferee from the mortgagor of a portion of the mortgaged property to avoid the contract on the ground of undue influence. 40 C L. J 67=1925 Cal. 94 Under s 19 A Contract Act when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Where the executant of a document had no opportunity to have it cancelled on the ground of undue influence, it is open to his representatives to raise the defence of undue influence. A. I R 1934 Cal. 762=59 C L. J. 762.

Agreement void where both parties are under mistake as to matter of fact.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

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* S. 19 A has been added by the Indian Contract (Amendment) Act, (VI of 1899) s. 3.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(*a*) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.

(*b*) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(*c*) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void

Notes—This section is applicable where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, and the agreement is void 10 C W N. 673=33 C 713=3 C. L J. 421 (F B.); see also 21 C. W. N. 979; 6 C 887; 6 Ind. Cas. 651; 69 P. R. 1874; 2 C. 602 (P C); 25 M. 561; 17 B. 407; U B R 1907 Evidence 13; 30 M. 284; 35 C. 855; 33 C. 713 A. I. R. 1933 Rang. 79 Contract in which there is no mistake as to formation of contract but only in execution of it, is not void 16 M. L W 75=43 M L J. 142=A. I R. 1923 Mad.
have made an agreement and one party
nows at the time that there is an error
of that error and cannot be allowed
to enforce it. A. I R. 1934 Cal. 778=38 C W N 908=61 C 548=152 Ind. Cas. 117. Action can be taken under this Act for mutual mistake of fact. 11 O. W. N. 1176=A. I. R. 1934 Oudh 442.

A contract can be avoided where both the parties committed a mistake as to an essential matter of fact. 18 Bom L R 201=34 Ind. Cas. 515=40 B. 638; 21 C. W. N. 404=25 C L. J. 459; 81 Ind Cas 81 To avoid a contract on the ground of mistake of fact, the mistake must be between the plaintiff and the defendant. 3 Rang. 477; 57 Ind. Cas 481; 50 C. 615=74 Ind. Cas 996; 29 C L J 526. This section deals with the case of a common mistake at the time of the transaction "as to a
matter of fact essential to the agreement
depending on construction might be
A contract can not be avoided where the
12 S. L R 41; see also 40 Ind. Cas.
vide A. I. R 1931 Mad 785=61 M L. J 437. When contract is void for mutual mistake, vendor can claim consideration for purchase money, but not interest or damages. 1930 A. L. J 327. Where a mining lease was executed for a plot of 100 bighas, but the plot was actually less than 100 bighas, there was no common mistake. 119 Ind. Cas. 205. Where subject-matter of sale substantially obtained by purchaser, this section does not apply. 100 Ind Cas 327 Where terms of contract are understood by parties in two different senses, contract is void and unenforceable under this section. 95 Ind. Cas 614.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Effect of mistakes as to law.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable*.

Notes—Where the parties honestly believed that the plaintiff had lost his right to the occupancy rights of her husband, by reason of her second marriage, and there was no fraud or misrepresentation by the defendant zamindar, and the plaintiff agreed to take the land on the increased rate of rent under a lease, *held* that the lease could not be set aside, as it was a contract entered into between the parties by reason of an

* The second illustration to section 21 has been repealed by Act 24 of 1917.

innocent mistake on a point of law shared by all the parties. *Sahinfan Bibi* v. *Madho Lal*, 4 A. L. J. 575=A W N. (1987) 197 Under this section, error of law does not vitiate a contract, much less will it annul a conveyance after the lapse of many years, unless there has been fraud and misrepresentation and an absence of negligence. 11 B. 174 ; 23 Bom. L. R. 939 See also 21 Bom. L R 939. Mistake as to law in force does not make contract voidable. A. I. R. 1933 Lah. 836

Contract caused by mistake of one party as to matter of fact

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

ict is only voidable and is Ind. Cas 591 ; 44 B. 361. fact, it cannot be avoided. 16 B 561 Under certain of mutual mistake and the like. But a seller cannot avoid performance of his contract on the plea that the contract has become commercially impossible or is more onerous than what he had considered it to be 86 Ind. Cas. 634. Where a party signs a contract written in language not known to him, he cannot plead ignorance of terms. 106 Ind. Cas 565.

What considerations and objects are lawful, and what not.

23. The consideration or object of an agreement is lawful, unless—

it is forbidden by law ; or

is of such a nature that, if permitted, it would defeat the provisions of any law ; or

is fraudulent ; or

involves or implies injury to the person or property of another, or

the Court regards it as immoral or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement, of which the object or consideration is unlawful is void.

Illustrations.

(*a*) A agrees to sell his house to B for 10,000 rupees Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(*b*) A promises to pay B 1,000 rupees at the end of six months ; if C, who owes to grant time to C accordingly Here the for the promise of the other party and

(*c*) A promises, for a certair B the value of his ship if it is wrecked on a considera- tion for B's payment and B's pa, e and these are lawful considerations

(*d*) A promises to maintain B's child and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations

(*e*) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(*f*) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(*g*) A being agent for a know- ledge of his principal, to obt: The agreement bet ... A and , A, on

tuted against B for . The agreement is void, as its object is unlawful.

(i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law

(j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code

Forbidden by law.—Where this consideration is of such a nature that if permitted it would defeat the provisions of any law, such transfer is invalid. A. I. R. 1931 All 589. The Government Servant's conduct rule is not based upon any statutory prohibition but is purely a rule of conduct. 33 Bom. L. R. 250= A. I. R 1931 Bom 269 A promise to give favourable evidence in a suit, cannot be enforced as the con W. R. 235; 2 M H C 243 An ly that they are to officiate by turr 6 B. H. C. t of which is to assist one person in carrying with the express declaration that it was out of ther, is a contract against public policy, and a suit cannot lie on it 10 W. R. 140. It is doubtful if a partnership agreement which has not been registered though required by s. 4, Companies Act, to be registered is void under this section A I R. 1933 Sind 29=26 S L. R. 395=141 Ind. Cas. 290. Money paid as bribe is not legally recoverable. A I R 1931 Rang. 83=32 Cr. L. J. 934=132 Ind. Cas. 553; but see A I R. 1933 Rang. 199=1933 Cr. C. 804.

ssory note 7 M. H. C. 200. Where a deed aims at defeating the right of escheat of Government the transaction is against public policy. 8 M. I. A. 500; 3 M. 215. Where the defendant, in consideration of a certain sum, promised to give his minor daughter in marriage to the plaintiff, the latter can sue to recover the money so paid on the defendant's failure to fulfil his part of the contract. 10 C 1054; see also 13 M. 83; 22 B 658; 16 B 673 But an agreement to assist a Hindu for reward in procuring a wife is void. 17 M 9

13 B 42; see also 2 C. W. N. 575. for consideration. 3 C. W. N. 5. An le of Excise Department is opposed to cts by way of wagering and gaming are

party can recover money paid thereunder. 84 Ind. Cas. 295. Where a bond is executed as part and parcel of an illegal transaction the bond can not be enforced. 77 Ind Cas 46.

within the meaning of this section. 45 Ind. Cas. 669 A lease to a person not licensed under the Madras Abkari Act for tapping trees for the purpose of drawing toddy is not *illegal, and can be enforced.* 61 Ind Cas 537 As to champertous Ind. Cas. 884. A contract directly b 3

intention 16 N. L. R. 129; 33 C 967; 4 N. L. R. 26.

Defeat the provision of law.—A contract entered into for the purpose, or with the necessary effect, of defeating a Statute, will not be enforced or recognised by the Courts, at any rate where both parties stand in *pari delicto.* 12 B. 422.

There is nothing necessarily unlawful in two or more persons agreeing not to bid against one another in an auction sale. 18 B. 342. A bargain to abstain from the prosecution of a person who has committed such an offence as that of wilfully giving false evidence can not be given effect to. 3 N. W. P. 166 ; see also 4 M. H. C. 14 ; 2 M. H. C 187 ; 11 W. R. 313 ; 17 W. R. 84 ; 11 B. 566 ; 1923 Cal. 292 ; 45 M. L. J. 59 ; 74 Ind. Cas. 843 ; 9 O. & A. L. R. 631 ; 73 Ind. Cas. 663 ; 89 Ind. Cas. 434 ; 29 C. W. N. 855 ; 29 C. W. N. 1029 ; 2 O. W. N. 791. See also A I R. 1931 All. 128=1930 A. L J. 1592=53 A. 130 ; 35 Bom. L. R. 850=A. I. R. 1933 Bom. 413 ; 37 C. W. N. 749=A. I. R. 1933 Cal. 817 ; A I. R. 1932 Lah. 446=33 P. L. R. 630 ;
Lah. 356=140 Ind. Cas. 220 ;
1934 Sind 71 ; A. I. R. 1934
ct made for or about any matter
Statute is void contract. 3 B L.
funds to carry on a suit in
ed, ought not to be regarded
; 1923 Nag 214 , 2 Bur.
public policy 72 Ind. Cas.
ransaction, he is bound to
a commissioner is illegal.
oid. 87 Ind. Cas. 353. An
nething of value is void as
Cas. 86. In a suit on a contract, if the defence
burden lies on the defendant to show clearly that
pose by illegal means. 3 Rang. 275. Where a
s 5,000 in cash, and further undertook to convey
to him certain immovable properties, for charitable purposes in the event of carrying on the litigation to full success, *held*, that such an agreement was contrary to public
Ind Cas. 563.
partly an agree-
invalid for failure
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272 ; 4 Lah. L. J.
eceive certain sum
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1931 Cal. 587=133
cy Act and as such
no suit lies on the basis of such mortgage. A. I. R 1935 All. 256 ; see also A. I. R. 1935 Nag 58.

Fraudulent—A partnership agreement made by an overseer in the Public
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fraud by
I ; and it
is then the duty of the Court to look into the matter, and if the Court comes to the conclusion that the parties were acting together with a view to perpetrate a fraud, and did in fact perpetrate that fraud that there is no difference in the degree of guilt of the plaintiff and that of the defendant, the duty of the Court is not to assist either party ; in other words, the duty of the Court is to dismiss the claim, because

72 Ind. Cas. 92 ; see also 72 Ind. Cas 553 ; 18 L W. 453 ; 72 Ind. Cas 777. A deed of gift intended to defraud the preemption right of the plaintiffs is void. 86 Ind. Cas. 741.

Public policy—It is contrary to public policy to induce public officers for money or other valuable consideration, to use their position and influence to procure
ween
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in India. Public policy should not be interpreted under section 23 of the Contract Act as comprehending all the political policies from time to time of the Government of India. 21 Bom. L. R. 788. An agreement between two persons not to bid against one another at a public auction is not unlawful or against public policy. 56 Ind. Cas. 993 ; A. I. R. 1932 Lah. 32 A promise to indemnify surety who stands bail and executes bond is illegal and opposed to public policy. 24 C. W. N. 368 ; see also 65 Ind. Cas. 137. A bargain to have a caveat discharged is not contrary to public policy. 58 C. 699 Contract to ...
influence in the course
A. I. R. 1935 Nag. 119
time. A I R. 1935 Pesh

... against a party may be contrary to the principles of equity and good conscience as unconscionable and extortionate bargains 36 C. W. N. 633=A. I. R. 1931 P C 100 ; see also 52 C L. J. 492. Agreement to finance litigation in consideration of having share of property if recovered is not *per se* opposed to public policy. A I R. 1931 P. C 100 (P C.)=61 M. L. J. 94=54 C. L. J. 183=33 Bom. L. R 960=35 C. W N. 633 (P. C) ; 52 C L J 492=A. I. R 1931 Cal. 417 ; A. I. R. 1934 Lah. 1017 ; A. I R 1923 Nag 214 , A. I R 1930 Lah. 392 ; 109 Ind. Cas 591 ; A I. R 1928 437 ; 93 Ind Cas. 959 ; 89 Ind. Cas. 229 ; 48 M. 230= 29 C. W. N 57 (P C)=80 Ind. Cas 807 ; 77 Ind. Cas 897=16 S. L. R. 278 ; 77 Ind. Cas 372 ; 77 Ind Cas 109 , 70 Ind Cas. 904 ; 24 O. C. 313=65 Ind. Cas. 129 ; 1 Lah 124=56 Ind. Cas 272 ; 59 Ind Cas. 10 ; 55 Ind Cas 635 ; 47 Ind. Cas. 563 ; 21 C. W. N. 873=42 Ind Cas 3 But *champertous* agreement, if extortionate and unconscionable is contrary to public policy. A I R 1933 Rang. 418 ; A. I. R. 1934 Rang. 316 ; A I R 1934 All 1023=151 Ind. Cas. 969. Giving monopoly of lorry traffic on a particular road to a particular company is opposed to public policy. 35 P. L. R. 511=A I. R 1934 Lah 474. Immoral consideration cannot become innocent by passage of time A I R 1933 Bom 209=35 Bom. L. R. 345.
... ject of delaying execution of decree
... I. R. 1933 All. 303 When the
... void. A I. R. 1931 Oudh 309=
... ; A I R 1933 Bom 262=35 Bom.
L. R. 404=144 Ind. Cas 781 ; A I R. 1931 All 461=132 Ind. Cas. 422. Payment of commission by debtor to agent of creditor who facilitates transaction of heavy loan is not illegal 130 Ind Cas ... P L. T. 614=A. I. R. 1931 Pat. 22.
... osed to public policy and is not void
... 85=A. I. R 1932 Lah. 633 Agreement
... against each other is not void 134 Ind. Cas. 101=32 P. L. R 879=A. I R 1932 Lah. 32 ; see also A. I R. 1933 Oudh 124= 8 Luck. 233=10 O W N 1=143 Ind Cas 595 Where out going *Kornam* recommends person to act till minor heir attains majority on agreement by such person to pay pecuniary consideration, agreement is opposed to public policy and cannot be enforced A I. R. 1933 Mad 768=65 M L J 532=38 M. L. W. 585= 145 Ind. Cas. 972. Agreements between traders to carry on business among members of their private association and to none else, act does not offend against s 23 and 27. 136 Ind. Cas 84=1931 A L. J. 84=53 A 316=A I R 1931 All. 83. Charge created by Mahomedan on unknown shares of one of his heirs is illegal and can not be enforced. A. I. R. 1933 *All* 934. Agreement to pay sum to prostitutes for cohabitation is void. A. I. R. 1935 Oudh 71

Involves or implies injury, etc.—When the plaintiff can not make out his case except through an immoral transaction to which he was a party he must fail. 10 Bom. L. R. 318=32 B. 581 ; 5 B. 295 ; 18 M. L. J. 456=4 M. L. T. 102 ; 23 A. 995. A bond for future adulterous intercourse is void. 45 M. L. J. 551 ; 47 A. 619. But when it is for past co-habitation it is valid. 15 Bom L. R. 240 ; 89 Ind. Cas. 573 ; 82 Ind. Cas. 14 ; *contra* 44 B. 542 Express agreement to indemnify a joint tort-feasor for commission of a tort is void. A I. R. 1932 Mad. 1.

A promissory note executed by a minor under the Court of Wards though void, is not unlawful. 21 A. L. J. 446=73 Ind. Cas 458. Sections 23, 26 and 27 of the Contract Act cannot be regarded as exhausting all the instances of agreements which are contrary to public policy. 1924 Oudh 404. A contract to pay brokerage is

neither immoral nor opposed to public policy. 60 Ind. Cas. 727. It is a well-established rule of equity that a person who has transferred a property to another for an illegal or immoral purpose can not get it annulled if the intended purpose has been carried out. 44 M. 329. The Courts in India will not assist a party to recover back his money paid in respect of a contract which is tainted with criminality or immorality, even though the contract has not been performed. 51 Ind. Cas. 280=4 Pat. L. T. 542 ; 48 C. 115 ; 1 C. L. J. 261.

Miscellaneous.—"Object" means purpose or design. 35 Bom. L. R. 345=A. I R. 1933 Bom 209 A trial of an offence need not actually be in progress to make an agreement for stifling a prosecution in respect of that offence is improper for the purpose of section 23 of the Contract Act. 46 Ind. Cas. 424 ; 68 Ind. Cas. 721. Payment for procuring exercise of private influence with Government agreement not opposed to public policy. 42 Ind Cas 122=3 Pat. L W. 332=(1918) Pat. 39. An agreement to abstain from bidding at an excise auction is not void under this section as being against public policy. 44 Ind Cas 223, 18 B. 342 ; 16 C. 194 ; 6 C. L J. 111 ; 46 Ind Cas 755 A suit is maintainable for the recovery of the sum actually paid pursuant to an agreement which is opposed to public policy. 27 C. L. J. 459 ; 1 C L J. 261. A contract to engage dancing boy for a certain price is valid. 47 Ind Cas. 138. A reference to arbitration of a non-compoundable offence is opposed to public policy. 47 Ind. Cas. 506. See also 42 B. 389. A purchase made *benami* by a Government servant in contravention of Government order in respect of it, is void. 47 Ind Cas. 694. A caste custom which authorises a minor wife to divorce her husband against his will and with or without any assignable reason, on payment of a sum of money fixed by the Court from time to time, must be regarded as immoral or opposed to public policy 39 B. 538. An agreement to share profits between the forest officer and the licensee is not forbidden by law 40 B 64=17 Bom L R. 701. A partnership for sale of excisable articles is not illegal 29 Ind Cas 480 A suit is not maintainable for recovering money lent and used for an illegal object as bribe 24 Ind Cas 692. Where the parties to a contract of sale of goods intended, not the actual transfer of goods, but mere adjustment of prices according to the fluctuating market rates :—*Held*, that the contract being illegal was not enforceable at law and the suit was not maintainable. 74 P L R 1916 There is no rule prohibiting a *Kanungo* from acquiring property as [illegible] to public policy. 14 A. L. J 959=39 A [illegible] en by a patwari in the name of his [illegible] suit on the basis thereof is not maintain[illegible] [illegible]ing of money by a pleader to his client, [illegible] is meant for the prosecution of the suit in which the pleader is engaged is a violation of the restrictions placed by law upon dealings between pleaders and their clients and must be deemed against public policy. 34 Ind Cas. 360. A contract in restraint of a trade is illegal and void. 9 Bur. L. T 28=33 Ind Cas. 238 (F B) An agreement to stifle prosecution is void 8 N. L. R. 97 ; 53 A 130 A contract to sell a girl for marriage is void 10 A. L. J. 159. An agreement arrived at between husband and wife for a future separation is void. 14 Bom L. R. 1178 Deposit in connection with illegal [illegible] R. 1932 Nag. [illegible] n to build so [illegible] the same on [illegible] the contract [illegible]ent reserved. I R 1931 Lah. 664=A. I. R. 1931 Lah 634.

Divisible contract.—Separable illegal part of contract does not make whole contract void. 145 Ind. Cas. 1=14 P. L T. Sup. 1=12 Pat 359=A. I R. 1933 Pat. 306 ; see also A I. R. 1932 Nag. 32=27 N. L R. 376=136 Ind Cas. 875 ; 35 C. W. N. 26=131 Ind. Cas. 133=A. I. R 1931 Cal. 421 ; 131 Ind. Cas 574=35 C W. N 28 =A I R. 1931 Cal. 416 ; A. I R 1933 All 468=144 Ind Cas. 373 ; A. I. R. 1931 Bom. 366=33 Bom. L. R. 260 ; A I R. 1931 Nag. 6, A I R. 1935 All. 862.

Void Agreements.

Agreements void, if considerations and objects unlawful in part

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A promises to superintend, on behalf B, a legal manufacture of indigo and an
romises to pay to A a salary of 10,000 rupees
bject of A's promise and the consideration

Notes.—Section 24 is not applicable to immovable property. 1934 A. L. J. 1193=A. I. R. 1934 All. 246. When an agreement is an indivisible agreement and part of a single consideration for an object is unlawful the whole agreement is void under this section. 32 B. 449=10 Bom. L. R. 553; see also 27 A. 266=1
132=57 B. 278=35 Bom. L. R. 163; A. I. R.
a person enters into a contract with a public
with the duties he owes to the public, such
=1 Ind. Cas. 351. In a post-nuptial contract, a stipulation by the husband that he would pay over to his wife all the money he might earn, is illegal, as contrary to public policy. 15 B. L. R. App. 5=23 W. R. 66. This section is not applicable to promises which are opposed in the alternative. 1931 A. L. J. 295. In an agreement if different clauses are separable, the fact that one clause is void does not necessarily cause the other clauses to fail. 33 Bom. L. R. 260. This section is not applicable to transfer of immovable property. 122 Ind. Cas. 872. In case of reciprocal agreements one can not be exposed if the other is void and unenforceable. 105 Ind. Cas. 823. A contract becomes invalid either by the illegality of the object or the consideration itself or by the incapacity of the promisor to enter into such contract. But where part is within competence of promisor, promisor can enforce the part. 122 Ind. Cas. 872. Without statutory authority a person can not hold to a part of contract and reject the rest. 55. C 142=32 C. W. N. 53

Agreement without consideration, void, unless

25. An agreement made without consideration is void, unless—

it is in writing and registered,

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents,* and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

or is a promise to compensate for something done,

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless

or is a promise to pay a debt barred by limitation law.

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.†

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(*a*). A promises for no consideration, to give to B. Rs. 1,000. This is a void agreement.

(*b*) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

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* In s 25 the word "documents" has been substituted for the word "assurances" by the Repealing and Amending Act (XII of 1891). For the law relating to the registration of documents, see the Indian Registration Act (XVI of 1908).

† See now the Indian Limitation Act (IX of 1908).

(*c*). A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(*d*). A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract

(*e*). A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(*f*). A agrees to sell a horse worth Rs. 1, 000 for Rs 10. A's consent to the agreement was freely given. The agreement is a contract, notwithstanding the inadequacy of the consideration.

(*g*) A agrees to sell a horse worth Rs. 1, 000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Clause (1).—An agreement to be valid under sub-section (1) must be made on account of natural love and affection 1 Bom. L R 495 ; A. I R 1932 All. 174 ; A. I. R. 1932 P. C. 34. Where a person under
document, out of natural love and affection, to
and, on the former failing to do so, the debtor
debtor is entitled to recover from such person the
the debt, as the breach of the obligation becomes actionable under this section. 13 M. L. J 428.

Clause (2).—Where the plaintiff voluntarily expended money for establishing a market to please the District authorities and not at the request of the defendants (shop keepers) or for their benefit, an agreement by the defendants to pay the plaintiffs in consideration of such expenditure a certain commission or articles sold through their agency in such market is one that does not come within the terms of s. 2 (d) of the Contract Act, and is void for want of consideration. 3 A 221. In order that a promise to grant any annuity to a person for future services be enforceable in law, it is incumbent upon the promisee to show that there was some contract for future services on his part which might have been enforced by the maker of the promise 51 Ind. Cas. 282.
money to mortgagor during h
659=1933 P. L. J. 399 Agree
is not without consideration 27 N. L. R. 281=A. I R 1931 Nag 197. But ratification of contract entered during minority is not competent, even after attainment of majority. A I. R. 1934 Pesh. 123

Cases—54 Ind. Cas. 436 ; 2 Lah. L. J. 306 ; 46 Ind. Cas 121.

Clause (3)—The word "debt" can be defined as a sum payable in respect of money recoverable. A I R. 1932 Lah 212 An unsatisfied debt, although barred, is good consideration for a bond, by reason of this clause The word "debt" in this clause includes judgment-debt as well. 14 B 390, 3 A 381 ; 28 C. W. N. 322 ; 26 A 363 ; A. I. R 1932 All. 38=132 Ind. Cas. 420 ; A I R. 1932 Bom. 522=34 Bom. L. R. 1005 ; A. I R. 1932 Oudh 49=8 O W. N. 1210=7 Luck. 313 ; A. I. R. 1934 Lah. 834. But a Court of Wards by a promise under this clause, has no authority to pay a debt barred by limitation. 19 M. 255. It is the debt and not a sum of money in consideration of the barred debt that the promisor should refer to 23 M. 94. This clause applies only to a case in which there is an express promise to pay and has no application to a case where an implied promise is inferred from a mere acknowledgment 1931 A. L. J. 56 ; A. I. R. 1931 All 375 ; 132 Ind. Cas. 420 ; 53 A 374 ; 8 O. W. N 1210 ; 130 Ind. Cas. 702 ; 129 Ind. Cas. 281 ; 124 Ind. Cas. 243 ; 123 Ind. Cas. 820 , 123 Ind. Cas. 90. The word limitation in s. 25(3) means limitation of time as prescribed by the law of limitation in force. A liberal interpretation ought to be put on s. 25(3) 129
[illegible] a promise within the meaning of this sec-
[illegible] be an accepted proposal reduced to writing.
[illegible] intention to pay wholly or in part the debt
[illegible] N. (1881) 95 ; A. I R. 1932 All. 100 ; A I.
[illegible]
[illegible] condition gives the cause of action. [illegible] see also 22 P. L R. 1906 ; 135 P. W. R. 1910 ; 102 P. R. 1905 ; 8 Ind. Cas. 811 ; 5 Ind. Cas. 418 ;

Illustration.

A promises to superintend, on behalf B, a legal manufacture of indigo and an romises. to pay to A a salary of 10,000 rupees ·bject of A's promise and the consideration

Notes—Section 24 is not applicable to immovable property. 1934 A. L. J. 1193=A. I. R. 1934 All. 246 When an agreement is an indivisible agreement and part of a single consideration for an object is unlawful the whole agreement is void under this section. 32 B. 449=10 Bom. L. R 553 ; see also 27 A. 266=1 132=57 B 278=35 Bom. L. R. 163 ; A. I. R. a person enters into a contract with a public with the duties he owes to the public, such =1 Ind. Cas. 351. In a post-nuptial contract, a stipulation by the husband that he would pay over to his wife all the money he might earn, is illegal, as contrary to public policy. 15 B. L. R. App. 5=23 W. R. 66. This section is not applicable to promises which are opposed in the alternative. 1931 A. L. J. 295 In an agreement if different clauses are separable, the fact that one clause is void does not necessarily cause the other clauses to fail. 33 Bom. L. R. 260. This section is not applicable to transfer of immovable property. 122 Ind. Cas 872 In case of reciprocal agreements one can not be exposed if the other is void and unenforceable. 105 Ind. Cas. 823 A contract becomes invalid either by the illegality of the object or the consideration itself or by the incapacity of the promisor to enter into such contract. But where part is within competence of promisor, promisor can enforce the part. 122 Ind. Cas. 872. Without statutory authority a person can not hold to a part of contract and reject the rest 55. C. 142=32 C. W. N. 53

Agreement without consideration, void, unless

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(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents,* and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

it is in writing and registered, / *affection between parties*

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless

or is a promise to compensate for something done,

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.†

or is a promise to pay a debt barred by limitation law.

In any of these cases, such an agreement is a contract

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations

(a). A promises for no consideration, to give to B. Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

* rances" to the

(*c*). A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(*d*). A supports B's infant son B promises to pay A's expenses in so doing. This is a contract

(*e*). A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

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Clause (1).—An agreement to be valid under sub-section (1) must be made on account of natural love and affection. 1 Bom. L. R. 495 ; A. I. R. 1932 All. 174 ; A. I. R. 1932 P. C. 34. Where a person undertakes by means of a registered document, out of natural love and affection, to discharge the debt due by another and, on the former failing to do so, the debtor himself discharges the debt, the debtor is entitled to recover from such person the amount paid by him to discharge the debt, as the breach of the obligation becomes actionable under this section. 13 M. L. J 428.

Clause (2).—Where the plaintiff voluntarily expended money for establishing a market to please the District authorities and not at the request of the defendants (shop keepers) or for their benefit, an agreement by the defendants to pay the plaintiffs in consideration of such expenditure a certain commission or articles sold [illegible] ne that does not come within the terms [illegible] r want of consideration. 3 A. 221. In [illegible] person for future services be enforce- [illegible] to show that there was some contract for future services on his part which might have been enforced by the maker of the promise. 51 Ind Cas. 282. Payment by mortgagee to creditor who has advanced money to mortgagor during his infancy is valid consideration A. I. R. 1933 All. 659=1933 P. L. J. 399. Agreement in settlement of doubtful claim of maintenance is not without consideration. 27 N. L R 281=A. I. R 1931 Nag. 197. But ratification of contract entered during minority is not competent, even after attainment of majority. A I. R. 1934 Pesh. 123.

Cases—54 Ind. Cas. 436 ; 2 Lah. L. J. 306 ; 46 Ind. Cas 121.

Clause (3).—The word "debt" can be defined as a sum payable in respect of money recoverable. A I. R. 1932 Lah. 212. An unsatisfied debt, although barred, is good consideration for a bond, by reason of this clause. The word "debt" in this clause includes judgment-debt as well. 14 B 390 ; 3 A. 381 , 28 C. W. N. 322 ; 26 A 363 ; A. I R 1932 All. 38=132 Ind. Cas 420 ; A I R 1932 Bom. 522=34 Bom L. R. 1005 ; A. I R. 1932 Oudh 49=8 O W. N. 1210=7 Luck. 313 ; A. I. R. 1934 Lah. 834. But a Court of Wards by a promise under this clause, has no authority to pay a debt barred by limitation 19 M. 255. It is the debt and not a sum of money in consideration of the barred debt that the promisor should refer to. 23 M 94. This clause applies only to a case in which there is an express promise to pay and has no application to a case where an implied promise is inferred from a mere acknowledgment. 1931 A L J 56 , A I R 1931 All. 375 ; 132 Ind. Cas. 420 ; 53 A. 374 ; 8 O W. N. 1210 , 130 Ind. Cas. 702 ; 129 Ind. Cas. 281 ; 124 Ind Cas. 243 ; 123 Ind. Cas. 820 , 123 Ind. Cas. 90. The word limitation in s. 25(3) means limitation of time as prescribed by the law of limitation in force. A liberal interpretation ought to be put on s 25(3) 129 Ind. C[illegible]

[illegible] referred to in it. *Ibid* : 8 B 104 : A. W. N. (1881) 95 , A. I R 1932 All. 199 ; A[illegible] promise to pay despite the conscio[illegible] ; 33 M 159 Under clause (3) a barr[illegible] for a promise to pay, the new promise [illegible] the whole of the promise, whether free [illegible] action 16 C. W. N. 636 ; see also 22 P. L. R. 1906 ; 135 P. W. R 1910 ; 102 P R 1905 ; 8 Ind Cas. 8[illegible]

102 P. R. 1908 ; 1 B. 590 ; 30 A. 268 ; 31 A. 495 ; 8 Bom. L. R. 644 ; 11 C. L. R. 581 ; 4 C. 500 ; 6 B. 683 ; [illegible] 422 F. B. ; 66 P. R. 1917 ; 60 Ind Cas. 5[illegible] Cas. 716 ; 67 Ind. Cas 298 , 45 M 345 [illegible] I. R. 1932 All. 38. Implied promise infe[illegible] ebt is not cause of action for suit unless there is express promise to pay debt. 60 C. 714=37 C.W.N. 326 [illegible] 614=34 P. L. R. 430=A. I. R 1933 [illegible] A. I. R. 1932 Mad. 219 ; A.I R. 1932 [illegible] 1933 All. 175=1933 A. L. J. 170. [illegible] e paid can be enforced. A. I. R. 1933 All. 179=54 All. 761. An account stated may only take the form of a mere acknowledgment of a debt, and in those circumstances, though it amounts to a promise and *the existence of a debt may* be inferred *that can* be rebutted, and it may very well turn out that there is no real debt at all, and in those circumstances there would be no consideration and no binding promise. But a very usual form as between merchants in business in which the account stated is an account which contains entries on both sides, and in which the parties who have stated the account between [illegible]

there arises a promise made for good consideration to pay balance shown on the account A. I. R. *1934 P C 144=38 C. W. N 813=59 C. L J. 494=36* P. L. R. 57=11 O W. N. 997=64 M L. J. 102 P. C. Where the sons of a Hindu father execute a hand-note for their father's time barred debt the sons cannot be made personally liable because under the law they were liable to the extent of the assets which have come into their hands ; if the promise be to pay the debt personally, that promise would be without any consideration A. I. R. 1934 178=38 C. W. N. 253=148 Ind. Cas. 1035 Whether entry constitutes promise to pay is question of fact. A. I. R. 1935 Lah. 877. Words *"Rupya dena baki Kabul hai"* in *Sarkat* do not indicate express promise to pay A. I. R. 1935 Nag. 221.

Explanation (1).—142 P. W R. 1918 ; 46 Ind Cas. 974.

Explanation (2) —The explanation provides that nothing in the section shal affect the validity, as between a donor and donee, of any gift actually made. The same rule applies as between a donee and the persons claiming through the donor. 30 Ind. Cas. 20.

Agreement in restraint of marriage void.

26. Every agreement in restraint of the marriage of any person, other than a minor, is void.

Notes.—Where it was mutually agreed between the fathers of newly married [illegible] cation and the [illegible] ife during the [illegible] 24 Ind. Cas. [illegible] authorises his [illegible] d wife is not void under this section. 19 C. W. N 1226. A custom by which a person who marries a girl *sui juris* is bound to pay her relations a sum of money as bride's price is immoral, in restraint of marriage and is opposed to the principle of this section. 58 Ind. Cas. 167=1 Lah. 157. But a condition imposing a restraint on marriage is valid. A. I. R. 1932 Oudh 103. Sections 23, 26 and 27 do not exhaust all instances of agreements contrary to public policy. 80 Ind. Cas. 560.

Agreement in restraint of trade void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Saving of agreement not to carry on business of which good-will is sold.

Exception I.—One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein :

Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.*

Notes—Under this section, whether the restraint is general or partial, unqualified or qualified if it is in the nature of a restraint of trade, it is void. 13 C. W. N. 388=9 C. L. J. 216. The language of this section is wider than the law on the subject as laid down in English cases. *Ibid.* To succeed in the defence under this section one must establish that the suit is one to enforce an agreement whereby some one is restrained from exercising a lawful profession, trade or business of any kind. 7 Bom. L R 107=29 B. 107, on appeal from 6 Bom. L. R. 23; see also 23 W. R. 146; 23 B. 103; 16 C W. N. 534. Whether a contract is in restraint of trade within the meaning of this section, is a question, to be determined on construction of the contract in each case. 13 M 472. The validity of a contract is generally determined by the law of the place where it is made 1 M. 134. For other cases, *vide* 8 C. 609; 11 C. 545, 19 C. 765; 13 M 475 Note; 15 M 79; 17 C. 320 Under this section an agreement which is in restraint of a lawful profession, trade or business is void. 16 C. W. N. 534. A combination amongst the traders of a particular locality to do business only amongst their numbers to pay part of the profits to a common fund, etc and levying of certain penalty for the breach of the conditions does not offend against the provisions of ss. 23 and 27 and is not actionable *per se*, merely because it brings profits to them and indirectly hurts a rival in trade. 53 A 316 An agreement in restraint of trade is only void to the extent to which it restrains trade or business and not in its entirety. A. I. R. 1931 All 539 Where a claim is founded on tort ss. 23 and 27 do not apply. 136 Ind. Cas 84=1931 A L. J. 84=53 All. 316=A. I. R. 1931 All. 83. When a covenant in restraint of trade is called in question the burden of justifying it is laid on the party seeking to uphold it. The tests of justification are: that a contract which is in restraint of trade cannot be enforced unless (a), it is reasonable between the parties; (b) it is consistent with the interest of the public. A. I. R. 1934 P C. 101=A. L R. 1934 P. C 125=1934 A. L J. 457=39 L. W. 618=154 Ind. Cas. 232; see also A. I R. 1934 Lah 110.

Cases.—18 Ind. Cas 183; 13 A L. J. 281; 21 C. W. N. 979; 34 Ind. Cas. 754; 41 M. L. J 657=48 I. A. 508; 48 C. 1030; 1 Bur. L. J. 72; 64 Ind Cas 794.

Agreements in restraint of legal proceedings void.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time [illegible] two [illegible] dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Saving of contract to refer to arbitration dispute that may arise.

Suits barred by such Contracts.

† *When such a contract has been made, a suit may be brought for its specific performance, and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.*

Saving of contract to refer questions that have already arisen

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

* Exceptions 2 and 3 of this section having been repealed by Act IX of 1932 have been omitted.

† In s. 28, the italicized clause of exception (2) has been repealed by the Specific Relief Act, (1 of 1877) throughout British India, except in the scheduled districts in which that Act is not in force

Notes.—This section only refers to contracts, which wholly or partially prohibit
. 1 C. 466 ; 1 A. 267
to a class of contracts
, until some question of
This section intends to
enact, as nearly as may be, what the English Law is upon the subject. 11 C. 232. This section is no bar to a suit for damages for breach of an agreement to refer to arbitration. 1 C 42 An agreement not to appeal against a decree in consideration of time being given to satisfy it, is not a void agreement, and is not prohibited by this section 1 A 267 (F B). A contract to sue within a certain time is valid. 14 Bom.

1931 Sind 124. This section does
e portion in the contract which ousts
Agreement that another Court to the
dicate upon the disputes arising under
the agreement of the parties is illegal. 122 Ind Cas. 488. Where two Courts normally have jurisdiction to try a suit an agreement that suit should be tried at one place is not contract in restraint of legal proceeding. 130 Ind. Cas. 252=57 C. 252=A. I. R 1
that the latter
(F. B)=1933 A.
is that claim if not brought within one year of date of delivery will be barred, *held*
it extinguished consignor's rights and hence it w
634=A I. R. 1932 Bom 330 ; see also A. I.
see 36 C W N 55=55 C L J 377=140 Ind
An agreement to refer dispute is not illegal. 13
A. I. R. 1932 Lah. 459 ; see also A. I. R 1932 (
98=139 Ind Cas. 362 ; A. I R. 1932 Sind 111
to appeal against a decree is not void and is
Pat. 644 An agreement selecting one out
A. I. R. 1935 Bom. 198.

Agreements void for uncertainty.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

tever to

, known
as an article of commerce. There is no uncertainty here to make the agreement void.

(*c*) A, who is a dealer in cocoanut-oil, only, agrees to sell to B "one hundred tons of oil." The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(*d*) A agrees to sell to B "all the grain in my granary at Ramnagar." There is no uncertainty here to make the agreement void.

(*e*) A agrees to sell to B "one thousand maunds of rice at a price to be fixed by C." As the price is capable of being made certain, there is no uncertainty here to make the agreement

(*f*) A agrees to sell
s one
thousand." There is no
The
agreement is void.

Notes—A bond for repayment of money, in which the executants charge "all
oid for uncertainty so
s section. 1 A. 275 ; 3
e face of it parol evidence is inadmissible to prove the intention of the executant. 31 Ind. Cas. 632. A covenant that upon expiring of terms of the lease there will be a fresh settlement between the parties is vague and uncertain. 32 Ind. Cas. 448. Agreement to pay rent in cash without the rate being fixed is void for uncertainty. 55 Ind. Cas. 482. Where a document is capable of two contrary interpretations, and practically

incapable of interpretation at all, it is void for uncertainty. 63 Ind. Cas. 48 A contract not specifying the time for its performance is not void merely for that reason. 85 Ind. Cas. 482. An agreement to sell at moderate price or at a fair rate or at a proper rate may be perfectly valid but an agreement to sell at a favourable or concession rate is void for uncertainty. 52 M. 300=121 Ind. Cas. 753. Contract to execute a *kobala* containing necessary stipulation is not vague and indefinite. 104 Ind. Cas. 527. Provision for lady for house from Rs. 100 to Rs. 200 per month

as. 1=4 P. L. T. (Sup) 1=12 Pat.

ns of agreement capable of being

, *vide* A. I. R. 1934 Mad. 276.

Agreements by way of wager void.

30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing.

This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or towards any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Section 294 A of the Indian Penal Code not affected.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code* apply.

Notes.—A contract by way of gaming and wagering is in India as in England, void and not legal. 9 C. 791. There is no difference between "gaming and wagering" used in the English statute and in the earlier Indian Act, XXI of 1848, and the expression "by way of wager" used in the present Contract Act Two parties may enter into a formal contract for sale and purchase of goods at a given price, and for their delivery at a given time But if the circumstances are such, as to warrant the legal inference that they never intended any actual transfer of goods at all, but only to pay or receive money between one another according as the market price of the goods should vary from the contract price at the given time, that is not a commercial transaction, but a wager on the rise or fall of the market. 29 C 461=5 C W N. 714 P. C.; see also *The Universal Stock Exchange* v. *Stranchan*, (1896) A. C 166;

15; 1 Ind Jur O S 126; 11 Bom L. R 997=4 Bom. L. R 1068. Sadla transaction need not be

e parties intends to make delivery of goods in

l on a

g con-

section

account

R. 67;

see also 80 P. R. 1895. Speculation does not necessarily involve a contract by way of wager, to constitute such a contract a common intention to wager is essential. 42 B. 863=34 M L. J. 305. The distinction between contracts which are legitimate and genuine trading transactions of a speculative character and contracts which are simply gaming and wagering transactions is frequently a narrow one and difficult of determination even after the examination of the parties concerned, the course of the business and the nature of the contracts 53 A 100=35 C. W. N. 841 P. C Where there

between two persons the prize for

is subscribed by outside persons

competitors themselves. 33 Bom.

L. R. 260. Whether a contract is a wagering one depends upon the intention of the parties at the time of the contract. Mere high speculation is not sufficient to render them void as wagering contract. 124 Ind. Cas. 453 To make a contract wagering there must be a common intention of the parties to make and accept no delivery and to deal only in differences Subsequent agreement not to demand or give delivery

* XLV of 1860

does not make the contract a wagering one. 26 N. L. R. 125=A. I. R. 1930 Nag. 111=120 Ind. Cas. 406 ; see also 51 Mad. 96=30 Bom. L. R. 238=A. I. R. 1928 P. C. 30=107 Ind. Cas. 29 ; 53 B. 367=31 Bom. L. R. 158=116 Ind. Cas. 251 ; A. I. R. 1929 Lah. 375 ; A. I. R. 1929 All. 134=1929 A. L. J. 262 ; A. I. R. 1926 Lah. 318 ; 76 Ind. Cas. 893=45 M. L. J. 716. The onus of proving that a contract was wagering one is on the party alleging that effect and the opposite party need not prove the contrary first. A. I. R. 1924 Nag. 290=78 Ind. Cas. 965 ; see also 24 Bom. L. R. 115=A. I. R. 1922 Bom. 81=66 Ind. Cas. 943 ; see also 25 Bom. L. R. 520=73 I ... 61=A. L.

Mandi

, 3 Bom.

inten-

9 ; see

542 ; A. I. R. 1934 Lah.

different from wager. 139

L. J. 792=A. I. R. 1933

M. L. J. 176. Company

anthropic. 139 Ind. Cas.

16 ; see also 42 B. 676=

ersons professing to hold

ree that, dependent upon

her, and the other shall

pay a sum of money or other stake, neither of the contracting parties having any other interest in that contract than the sum of stake he will so win or lose, the contract is a wagering one. A. I. R. 1926 Sind 202=94 Ind. Cas. 371. Nazarana contracts are not necessarily contracts. 138 Ind Cas. 241=13 Lah. 766=33 P. L R 450=A I R 1932 Lah. 356 A suit directly on wagering contract is not maintainable but an agent receiving money on his principal's behalf as a result of wagering contract is liable to account to the principal. 7 Rang. 300=A. I. R. 1929 Rang. 244 ; see also A. I. R. 1932 Lah. 356=33 P. L. R. 450=13 Lah. 766 ; 25 A. L. J. 736=A. I. R 1927 All 823 ; 25 A. L. J 736=A I. R. 1927 All. 795 ; 49 A. 438=A. I. R. 1927 All. 438 ; 26 Bom. L. R. 1097=85 Ind. Cas. 613. In determining whether a contract is wagering one or not substance of the matter is to be regarded, A. I. R. 1935 Mad. 135 Forward contracts are most necessarily of speculative nature. A. I R 1935 Sind 38.

CHAPTER III.

Of Contingent Contracts.

31. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

"Contingent contract" defined.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt This is a contingent contract.

member of a sugar manu-

appointed the sole agent

e company was not manu-

s of the agency were not

he company either declined

e, and the latter went into

was not liable to contribute towards the liquidation. 89 Ind. Cas. 438=23 A. L. J. 608.

Enforcement of contracts contingent on an event happening.

32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations.

(*a*). A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's life-time.

(*b*) A make a contract with B to sell a horse to B at a specified price if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse

(*c*) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void

[illegible] a certain sum [illegible] be enforced [illegible] of the pleader [illegible] this section and the event has [illegible] *Shunker Das* v. [illegible] act dependent [illegible] or becomes im- [illegible]. Ante-nuptial [illegible] 117 Ind. Cas. [illegible] it was contingent has happened. 138 Ind Cas 525=33 P L. R 207.

Enforcement of contracts contingent on an event not happening.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Illustration

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk The contract can be enforced when the ship sinks

Notes —When acceptance is by telegram with condition that it would be confirmed by post if mistake found in telegram, contract is complete subject to possible discovery of mistake. 67 Ind Cas 487.

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person

34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustrations.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

Notes —*Vide* 34 Ind. Cas 46=12 N. L R. 69

When contracts become void which are contingent on happening of specified event within fixed time.

35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Illustrations.

(*a*) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(*b*) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Notes.—In contracts under this section the specified event as a rule is independent of will of either party. 70 Ind. Cas. 870. Sale contingent on not paying amount within certain time is contingent contract and becomes void if payment is made within that time. 91 Ind. Cas 330.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Agreements contingent on impossible events void.

Illustrations.

(*a*) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(*b*) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Obligation of parties to contracts.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations.

(*a*) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(*b*) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Notes.—Under this section promises bind the representatives of the promisors before performance. 4 P. R. 1902 Rev.; see also 106 Ind. Cas. 831; 91 Ind. Cas. 390. Contract by joint Hindu family manager personally is not enforceable by other members after his death. 77 Ind. Cas 378. Voluntary subscription is payable only when work is commenced on its basis. 143 Ind. Cas. 496=64. M. L. J. 574=1933 M. W. N. 368=A. I. R. 1933 Mad 524. Third party getting benefit must pay money due under contract. 41 M. 488=22 M. L. T. 543=34 M. L. J. 193=43 Ind. Cas. 625. Where the contract is to deliver goods by instalments, parties must perform their respective promises. 43 Cal. 305=23 C. L. J. 62=20 C. W. N. 240=33 Ind. Cas. 1; see also 46 Ind. Cas. 497. Vendor is not bound to see that purchaser takes delivery in time when vendor has accepted tender of delivery and drawn samples. 9 S. L. R. 160=32 Ind. Cas. 720.

Effect of refusal to accept offer of performance.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions :—

(1) it must be unconditional :

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do :

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustrations.

A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Notes—A reasonable opportunity afforded for the examination is a reasonable limit alike for the vendor and purchaser 6 B 692. The payment of the mortgage debt to one of several co-mortgagees, without the concurrence of the others, is not a valid discharge thereof 23 Ind Cas. 8. Where the due date falls on a Sunday the custom is for the delivery to be completed on Saturday. 24 Ind Cas 883=7 S. L R. 141. When a condition in a contract that notice should be given of the arrival of the goods by a particular ship is not an essential part of the contract, failure to give such notice or a mistake in the notice given, is not a breach of contract entitling one party to avoid it for that reason, nor can that notice by itself be deemed to be an offer of performance within the meaning of this section. 29 Ind Cas. 712. The tender under this section without payment of money into Court at the time of suit can nevertheless stop the running

or to one of several co-mortga-

mortgage debts 68 P R. 1917

.. ad in mortgage, a tender before

suit of the amount due must be followed by payment into Court in order to stop the running of interest. 1931 M. W. N. 1226 A conditional tender could not amount to a valid tender. 130 Ind. Cas 817=A. I. R. 1931 Nag 91. Refusal of cheque on the ground that it was for less amount is wrong. 32 Bom L. R 1660 ; but see A. I R. 1930 Oudh 208 ; 74 Ind. Cas 246. Plea of tender is good only if it is accompanied by deposit in Court. 32 C. W. N. 1082 Valid tender amounts to paying actually. 55 C. 624. Interest ceases to run when valid tender is improperly refused 90 Ind. Cas. 637. Tender by cheque if not refused is valid. 116 Ind Cas. 844. Generally, the vendor is under no obligation to see that the purchaser takes delivery within time ; all that he has to do is to offer delivery within time and to give all customary assistance to the purchaser in taking delivery. 32 Ind. Cas. 720 To be binding on the promisee an offer or performance of a contract by the promisor must be at the proper time and place, and when the contract specifically provides a place of perfor-

named in the contract. 46 Ind. Cas.

perform his part of the agreement it

a tender of the price. 135 Ind. Cas.

606=32 P. L. R. 828 Natural place of inspection is place of delivery unless such place is not final destination of goods to vendor's knowledge and inspection at that place is unsuitable or unreasonable A. I R. 1932 Cal. 879=59 C 928=140 Ind. Cas. 877 ; see also A. I. R. 1927 Mad. 62=97 Ind. Cas. 866 ; 49 M. L. J. 530=22 M. L. J. 265=90 Ind. Cas. 481 ; 42 Ind. Cas 382. Vendor's physical possession is not necessary, delivery is usually given on delivery of orders. 49 M L. J. 530= A I. R. 1925 Mad. 168=90 Ind. Cas. 481 ; see also 49 M. L. J. 300=A. I. R. 1925 Mad. 971=86 Ind. Cas. 299 ; 48 M. L. J. 522=A. I R. 1925 Mad. 888=90 Ind. Cas.

206. Where debtor tenders portion of debt and asks creditor to take that in full satisfaction, this is tender with condition and creditor is entitled to reject it. 25 Bom. L. R. 839=A. I. R. 1925 Bom. 264=87 Ind, Cas. 129. In a contract of repurchase, production of cash only is strict compliance but vendor's conduct may amount to dispensation with literal compliance. 2 O. W. N. 386=12 O. L. J. 534=A. I. R. 1925 Oudh 533=89 Ind. Cas. 484 Tender to be valid must be without conditon. 27 C. W. N. 299=37 C. L. J. 457=A. I. R. 1922 P. C 347=44 M. L. J. 728=69 Ind. Cas. 273 ; 51 Ind. Cas. 793 ; 130 Ind. Cas. 817=13 N. L. J. 213 ; 31 Mad. L. T. 217=27 C. W. N. 299=37 C. ... 'ender to be proper must be of whole amount due. ... 26 O. C. 59=A. I. R. 1923 Oudh 241=74 Ind. Cas. 2... refuses to accept payment to stranger as equivalent to payment to himself. A. I. R 1925 Lah. 180=78 Ind. Cas. 80. In case of principal and agent this section is not applicable 4 P. L. T. 531=2 Pat. 585=A I. R. 1923 Pat. 464=75 Ind. Cas. 1022. In the absence of fraud, payment to one mortgagee operates as discharge A. I. R. 1924 Lah. 33=74 Ind. Cas 682 ; see also 44 Ind. Cas. 627. Deposit in Court is not good if made with condition. 2 Pat. 534=A I. R. 1923 Pat. 418=72 Ind. Cas. 907 ; but see 41 Ind. Cas. 921=68 P. R. 1917 , 56 Ind. Cas. 403. Acceptance by one of joint creditors when money sent to both absolves debtor. A I. R. 1923 All. 465=71 Ind. Cas. 472. Interest will not cease to run by non-tender unless the tender, if made, could have been refused. 46 Mad. 103=44 M. L. J. 631=26 Bom. L. R. 541=38 C. L. J. 34=A I. R. 1923 P C 26=71 Ind Cas 1035.

Effect of refusal of party to perform promise wholly

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

(*a*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every weak during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(*b*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

Notes.—This section confers on the party to a contract the right to put an end to the contract, in case of default on the part of the other party to the contract to perform his promise in its entirety, but the person aggrieved in such a case may ... But if he does not avail himself of the right, ... at the contract must still be treated as ... see also 35 P L. R. 593 ; 90 Ind. Cas. ... L. J 249=33 C. 477. This section does not apply to a transaction which is not a contract based on mutual promises or an agreement to convey, but is an actual conveyance of immovable property. 2 B. 547. This section only enacts what was the law in England and the law of India, before the Act was passed. 4 C 252 ; see also 34 B. 192=11 Bom. L. R, 335=2 Ind. Cas. 475. Repudiation of contract by one party entitles the other party to rescind it or to treat it as broken and to sue for damages. 12 Mys. L. J. 81 ; see also A. I. R. 1934 All. 617=149 Ind Cas. 304. When one party by his conduct makes it imopssible to perform his contract in its entirety within stipulated time, the other party is legally entitled to put an end to the contract. 134 Ind. Cas. 779=32 P. L. R. 593 Repudiation must be total, absolute and clear. 47 B. 924=25 Bom. L. R. 1063=87 Ind. Cas. 67 ; see also 28 C. W N. 104=83 Ind Cas. 260. Early repudiation if accepted puts an end to the contract. 5 Lah. 497=7 L. L. J. 19=A. I. R. 1925 Lah. 217. Measure of damages is to be assessed at current rate on date of repudiation. 133 Ind Cas 861=33 Bom. L. R. 703=A. I. R. 1931 Bom. 386. If no action is taken by other party, refusal before due date does not take away right of claiming performance within reasonable time.

8 Lah. 501=28 P. L. R 542=A. I. R 1927 Lah 693=106 Ind. Cas. 10. Talking of refusing to perform but asking for further information and speaking of sending definite reply when it arrives is not repudition. 70 Ind. Cas. 346=A. I. R. 1922 Mad. 28=15 L. W. 9. Section 64 will apply in case of contract voidable even by reason of breach under s. 39 and not only to contracts voidable under s. 19. 25 O. C. 169=10 O. L. J. 166=69 Ind. Cas. 789. If a party shows his acquiescence even after refusal by other, contract is not put an end to. 46 B 489=23 Bom L R. 1144=A I. R. 1922 Bom. 303=66 Ind. Cas. 726. Unreasonable postponement will entitle vender to terminate contract for sale of land. 40 M. L. J. 13=A I. R. 1921 Mad. 141=61 Ind. Cas. 457. Promisee is not bound to accept part performance. 3 L. L J. 14=59 Ind. Cas. 971.

By whom Contracts must be performed

Person by whom promise is to be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(*a*) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(*b*) A promises to paint a picture for B. A must perform this promise personally.

Notes—Specific performance requiring contract for purchase of immovable property can be claimed against legal representative and the remedy does not die with the party who agrees to purchase. 120 Ind. Cas. 240.

Effect of accepting performance from third person.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Notes.—Under this section the plaintiff's lien for the unpaid purchase money cannot be enforced, when the lien was satisfied by payment made by a third party. 17 Ind. Cas, 288; see also 39 A 178 P. C.; 112 Ind. Cas. 491.

Devolution of joint liabilities.

42. When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death, of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Notes.—Rule of survivorship among joint tenants is modified by ss. 42 and 45. 122 Ind. Cas. 404. On misappropriation of public trust by manager other members are jointly and severally liable to repay with interest amount used in family business. 85 Ind. Cas. 2.

Any one of joint promisors may be compelled to perform.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any "one or more"* of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

* Substituted by Act XII of 1891.

206 Where debtor tenders portion of debt and asks creditor to take that in full sat faction, this is tender with condition and creditor is entitled to reject it. 25 Bo L R. 839=A. I. R. 1925 Bom. 264=87 Ind, Cas. 129 In a contract of repurchase, production of cash only is strict compliance but vendor's conduct may amount to dispensation with literal compliance. 2 O. W. N. 386=12 O. L. J. 534=A. I. R. 1925 Oudh 533=89 Ind. Cas. 484. Tender to be valid must be without conditon. 27 C. W. N. 299=37 C. L. J. 457=A. I. R 1922 P. C. 347=44 M. L. J. 728=69 Ind. Cas. 273 ; 51 Ind Cas. 793 ; 130 Ind. Cas. 817=13 N. L. J. 213 ; 31 Mad. L. T. 217=27 C. W N. 299=37 C. L J 457=69 Ind. Cas. 273. Tender to be proper must be of whole amount due. This applies to mortgages also 26 O C. 59=A. I. R. 1923 Oudh 241=74 Ind Cas. 246 Tender is not valid if payee refuses to accept payment to stranger as equivalent to payment to himself. A. I. R 1925 Lah. 180=78 Ind. Cas. 80. In case of principal and agent this section is not applicable 4 P. L. T. 531=2 Pat. 585=A I. R. 1923 Pat. 464=75 Ind. Cas. 1022 In the absence of fraud, payment to one mortgagee operates as discharge A. I R. 1924 Lah. 33=74 Ind. Cas 682 ; see also 44 Ind. Cas 627. Deposit in Court is not good if made with condition. 2 Pat. 534=A. I R. 1923 Pat 418=72 Ind. Cas. 907 ; but see 41 Ind. Cas. 921=68 P. R. 1917 ; 56 Ind. Cas. 403 Acceptance by one of joint creditors when money sent to both absolves debtor A. I. R 1923 All. 465=71 Ind. Cas. 472. Interest will not cease to run by non-tender unless the tender, if made, could have been refused. 46 Mad 108=44 M. L. J. 631=26 Bom. L. R. 541=38 C. L. J. 34=A. I. R. 1923 P. C. 26=71 Ind Cas 1035.

Effect of refusal of party to perform promise wholly.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations

(*a*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every weak during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre B is at liberty to put an end to the contract.

(*b*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

[illegible] But if he does not avail himself of the right, at the contract must still be treated as [illegible] , see also 35 P. L. R. 593 ; 90 Ind Cas. [illegible] L J. 249=33 C. 477. This section does not apply to a transaction which is not a contract based on mutual promises or an agreement to convey, but is an actual conveyance of immovable property. 2 B. 547. This section only enacts what was the law in England and the law of India, before the Act was passed. 4 C 252 ; see also 34 B. 192=11 Bom. L. R, 335=2 Ind. Cas 475 Repudiation of contract by one party entitles the other party to rescind it or to treat it as broken and to sue for damages. 12 Mys. L. J. 81 ; see also A. I. R. 1934 All 617=149 Ind Cas. 304. When one party by his conduct makes it imopssible to perform his contract in its entirety within stipulated time, the other party is legally entitled to put an end to the contract. 134 Ind. Cas. 779=32 P. L. R. 593 Repudiation must be total, absolute and clear. 47 B. 924=25 Bom. L. R. 1063=87 Ind Cas. 67 ; see also 28 C. W N. 104=83 Ind. Cas 260 Early repudiation if accepted puts an end to the contract. 5 Lah. 497=7 L. L. J. 19=A. I. R. 1925 Lah. 217. Measure of damages is to be assessed at current rate on date of repudiation. 133 Ind. Cas. 861=33 Bom. L. R. 703=A. I. R. 1931 Bom 386 If no action is taken by other party, refusal before due date does not take away right of claiming performance within reasonable time.

8 Lah. 501=28 P. L. R. 542=A. I. R. 1927 Lah. 693=106 Ind. Cas. 10. Talking of refusing to perform but asking for further information and speaking of sending definite reply when it arrives is not repudition. 70 Ind. Cas. 346=A. I. R. 1922 Mad. 28=15 L. W. 9. Section 64 will apply in case of contract voidable even by reason of breach under s. 39 and not only to contracts voidable under s. 19. 25 O. C. 169=10 O L. J. 166=69 Ind. Cas. 789. If a party shows his acquiescence even after refusal by other, contract is not put an end to. 46 B. 489=23 Bom. L. R. 1144=A. I. R. 1922 Bom. 303=66 Ind. Cas. 726. Unreasonable postponement will entitle vender to terminate contract for sale of land. 40 M. L. J. 13=A. I. R. 1921 Mad. 141=61 Ind. Cas. 457. Promisee is not bound to accept part performance. 3 L. L. J. 14=59 Ind. Cas. 971.

By whom Contracts must be performed

Person by whom promise is to be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it

Illustrations.

(*a*) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(*b*) A promises to paint a picture for B A must perform this promise personally.

Notes.—Specific performance requiring contract for purchase of immovable property can be claimed against legal representative and the remedy does not die with the party who agrees to purchase. 120 Ind. Cas. 240.

Effect of accepting performance from third person.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Notes.—Under this section the plaintiff's lien for the unpaid purchase money cannot be enforced, when the lien was satisfied by payment made by a third party. 17 *Ind. Cas*, 288 ; *see also* 39 *A* 178 *P. C.* ; 112 *Ind. Cas.* 491.

Devolution of joint liabilities.

42. When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death, of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Notes.—Rule of survivorship among joint tenants is modified by ss 42 and 45 122 Ind. Cas. 404. On misappropriation of public trust by manager other members are jointly and severally liable to repay with interest amount used in family business. 85 Ind. Cas. 2.

Any one of joint promisors may be compelled to perform

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any "one or more"* of such joint promisors to perform the whole of the promise.

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Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

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* Substituted by Act XII of 1891.

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(*a*) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(*b*) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B

(*c*) A, B and C are under a joint promise to pay D 3,000 ruppes. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(*d*) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Notes.—Under this section,
gets a right to proceed again
be exercised before the creditor l
tion, a joint debtor has no ri
and, so far as the liability under a contract is concerned, the section make all joint contracts joint and several. 22 A 307=A. W N. 1900, 73. The principle of this section applies to the case of the members of a patnership firm being sued on a contract of the firm. 6 B. 700. A promissory note can, in no way, prove the joint liability of the executant under an oral contract which is independent of the promissory note. 3 Ind. Cas 403. The rule of English law is unaffected by this section the effect of which is not to change a joint liability into a several one at the option of the promisor. 3 C 353=1 C L. R 488 When two persons jointly leased a property from plaintiff, they are in the absence of any agreement to the contrary, jointly and severally liable to pay the rent, and it is open to the plaintiff to sue any one or both of them 106 P. R. 1914 A release of a joint debtor does not operate as a release of the others. Such a release can give his co judgment debtors no higher rights than they would have had prior to the judgment. Full effect must be given to the substantive law laid down in s. 44 *Moolchand* v. *Alwar City*, 17 M. L. T. 449=29 Ind Cas. 303. Although a creditor is at liberty to realise the whole of his dues from one of his several joint judgment debtors, he cannot bind himself not to proceed against one of them to realise the whole of his dues from the other debtors 57 Ind. Cas 844. The mere fact, that a suit could lie against one of the two joint promisors could alter the fact that the original liability of them was incurred, not on his own account only, but jointly with another, and so one of result in the nature of the dealings taken as a whole being altered. 45 Bom. 129. ... t one partner is no bar
to subseque ... not extinguished. 145
Ind. Cas. 61 ... see also A. I. R. 1933
Nag. 324=1 ... pays compensation to
vendee in p ... contribution from other

ted in a contract by single person. 24 C. L. J.
can be sued independently and made liable
special terms in the contract. 2 Pat. 466=;
137=A. I. R. 1927 Pat. 426=105 Ind. Cas 484
962 ; A. I. R. 1930 Bom. 5=31 Bom L. R.
Ind. Cas. 129 ; 8 P. L. T. 201=A. I. R. 1927 P
persons become interested by inheritance in a contract made by a single person
. 783=119 Ind. Cas. 419 ; but see 22
. 732 ; 50 C. 737=74 Ind. Cas. 1032.
selecting one of the partners who is a
the whole debt. 4 Lah. 239=A. I. R.

[illegible] his section, the contract [illegible] ection is applicable to all [illegible] see also A. I. R. 1934 [illegible] lies at the instance of the joint debtors from whom the whole amount of debt has been realized. A. I. R. 1934 Pat. 411=148 Ind. Cas. 434. Each co-tenant is liable to pay whole rent when sued by landlord. A. I. R. 1935 Pat. 146.

Effect of release of one joint promisor.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Notes—The section means, generally, that a release to one of several contractors does not discharge the co-contractors, and applies, as well to a discharge after breach, as to a release before breach. 4 C. 336=3 C L R. 546. A joint promisor, whose liability to the promise was kept alive beyond three years from the date of the promissory note, and who was consequently compelled to pay a decree of the Court more than his proportion of the debt to the promisee, can sue another joint promisor for contribution, though the decree exonerated that other joint promisor from payment, on the ground that the debt against him was barred by limitation. 16 M. L. T. 569 Although under certain circumstances one of the several joint tenants may be made liable for the whole rent, yet when the claim for the arrear of rent against some of the heirs of the original tenants is barred the remaining heirs can not be made separately liable for the entire rent. 48 Ind. Cas. 536. It is doubtful if a discharge by one of two joint payees is valid and binding on the other. 36 M. 544 Release by creditor of some partners, operates as absolute release in favour of the whole: 32 Bom. L R 1656=A I R 1931 Bom 123; but see A. I. R. 1927 All 830=102 Ind. Cas. 193. Release by the creditor of one of the mortgagors, jointly and severally liable, without expressly reserving his remedies against the other mortgagors, has the effect of releasing others. 44 C 162=25 C. L. J. 24=21 C. W. N. 740=34 Ind Cas 609 Position of joint judgment-debtors is same as that of joint promisee. Release granted to one does not absolve others. 145 Ind. Cas. 981=34 P L. R 301=A. I. R. 1933 Lah. 505.

Devolution of joint rights.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the respresentative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Notes—An objection by the defendant that one of the several joint promisees cannot sue alone to enforce a payment of a debt due to them jointly is valid. 156 P. R. (1889) F. B. One of several joint mortgagees cannot give a valid discharge without the consent of the others. 81 Ind. Cas. 416. The representatives of a deceased partner are not necessary parties to a suit for the recovery of a debt, which accrued due to the partnership during the life-time of the deceased. 10 P. R. 1906; 17 B. 6; 9 A. 486; 24 Ind Cas. 268; 29 Ind Cas. 586 One joint creditor can, in equity, give a valid receipt to a debtor in full discharge of the claims of himself and of the other joint creditors. 4 Pat. L W. 57=42 Ind Cas. 408; see also 44 Ind. Cas. 627; 54 Ind Cas. 273; but see 41 M. 437; 56 Ind Cas. 463; 55 Ind. Cas. 841; 63 Ind. Cas 745; 63 Ind Cas 87; 3 Lah. L J 502; 4 Lah L. J. 23; 71 Ind. Cas. 951. Inspite of s. 45 it is not imperative to add legal repesentatives of deceased co-partners to an action for recovery of a debt by the surviving partners. 26 Bom. L. R. 147=A. I. R. 1927 Bom 125=101 Ind. Cas. 943. Partners who have ceased to have interest in the partnership need not be on the record as a necessary

party. A. I. R. 1926 Sind 78=90 Ind. Cas. 111. Section 45 has not been modified by the Civil Procedure Code, save as appears in order 30, which is confined to cases where suits are brought not by individuals but in the name of firms. 8 Lah. 1=28 P. L. R. 455=A. I. R. 1927 Lah. 115=100 Ind. Cas. 721 ; see also 29 Bom. L. R. 1296=51 B. 986=A. I. R. 1927 Bom. 581=105 Ind. Cas. 305. Payment made to managing co-mortgagee operates as valid discharge of debt even so far as other mortgagees are concerned. A. I. R. 1928 Cal. 125=105 Ind. Cas. 751 ; 19 A. L. J. 852. In other cases payment to one co-mortgagees without consent of others does not give discharge of debt due to others. 1930 A. L. J. 290=A. I. R. 1930 All. [illegible] Ind. Cas. 405=10 S. L. R. [illegible], wife can sue in respect of [illegible] 7 Rang. 806=A. I. R. 1026 Rang. 306=121 Ind. Cas. 807. Where debt is due to joint promisees, suit by one to recover his share is not maintainable. 51 M. L. J 648=A. I. R. 1927 Mad. 84=98 Ind. Cas 549 ; see also A. I. R. 1928 Sind 16=105 Ind. Cas 544 ; 46 I. A. 272=37 M. L. J. 483=17 A. L. J. 997=24 C. W. N. 297=53 Ind. Cas. 131.

Time and Place for Performance.

Time for performance of promise where no application is to be made and no time is specified.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question "what is a reasonable time" is, in each particular case, a question of fact

Notes.—The question as to what is reasonable time is one of fact. 10 M. L. T. 496. Ordinarily in agreements for sale of property time is not of the essence of the contract, but it is open to a party if it was not originally of the essence to make it of such essence, by service of notice. 95 Ind. Cas 614=A I. R. (1926) Nag. 435.

Time and place for performance of promise where time is specified and no application to be made.

47. When promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day, and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Notes—18 Bom. L. R. 96=32 Ind. Cas. 948=40 B. 517 , A. I. R. 1931 Lah. 696 ; 75 Ind. Cas. 123.

Application for performance on certain day to be at proper time and place.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question, "what is a proper time and place " is, in each particular case, a question of fact.

Place for performance of promise where no application to be made and no place fixed for performance.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place,

Notes.—Where no specific contract exists as to the place where the payment of the debt is to be made, it is clear that it is the duty of the debtor to make the payment where the creditor is. 6 Bom. L. R. 1038=30 B. 167 ; see also 7 Bom. L. R. 993 ; 5 Rang. 451=54 I. A. 265=25 A. L J. 690=31 C. W. N. 998=A. I. R. 1927 (P. C.) 156 ; 121 Ind. Cas, 668=A I. R. 1930 Nag 207=13 N. L. J. 4 ; A. I. R. 1933 Sind 62=142 Ind Cas. 844 ; A. I R. 1933 All. 147 ; A. I. R. 1935 Bom. 283 ; A. I. R. 1934 Mad. 581=67 M. L. J 296=1934 M. W. N. 1011=40 L. W. 498. The Indian Contract Act makes no provisions for the place of performance when no time or place is fixed, and where there is no provision Bom. L. R. 903. Under this section the promis for performance, where no place is fixed. The place but the promisor is bound to apply to t place. 24 C. 8=23 I. A. 119 Where in an agreement, no place is fixed for payment, a creditor has the right to fix a reasonable place. 6 S. L. R 181.

Performance in manner or at time prescribed or santioned by promisee.

50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Illustrations.

(*a*) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(*b*) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(*c*) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part-payment.

(*d*) A desires B, who owes him Rs. 100, to send him a note for Rs 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Notes—Reading this section along with Rule 61 of the Bengal *Touji* Manual, where land revenue is sent to the Collector through Post office by means of a Revenue Money Order before the last day it is payable, it is a valid payment. 78 Ind. Cas. 668=51 C. 776 The method of payment in discharge of a contract incudes also mere transfer of figures in accounts. 20 S. L R 335=A. I. R 1925 Sind 144 =81 Ind. Cas. 834.

Performance of Reciprocal Promises.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(*a*) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(*b*) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Notes—A plaintiff in making a demand for the fulfilment of a contract on the defendant, is not required to make an actual tender of money, but it is enough if he

party. A. I. R. 1926 Sind 78=90 Ind. Cas. 111. Section 45 has not been modified by the Civil Procedure Code, save as appears in order 30, which is confined to cases where suits are brought not by individuals but in the name of firms. 8 Lah. 1=28 P. L. R. 455=A. I. R. 1927 Lah. 115=100 Ind. Cas. 721 ; see also 29 Bom. L. R. 1296=51 B. 986=A. I. R. 1927 Bom. 581=105 Ind. Cas. 305. Payment made to managing co-mortgagee operates as valid discharge of debt even so far as other mortgagees are concerned A. I. R. 1928 Cal. 125=105 Ind. Cas 751 ; 19 A. L. J. 852. In other cases payment to one co-mortgagees without consent of others to others. 1930 A L. J. 290=A. I. R. 1930 All. ah L. J. 502 ; 40 Ind. Cas. 405=10 S. L. R. nd wife being partners, wife can sue in respect of partnership asset in her capacity as surviving partner. 7 Rang. 806=A. I. R. 1026 Rang. 306=121 Ind. Cas. 807. Where debt is due to joint promisees, suit by one to recover his share is not maintainable. 51 M. L. J 648=A. I. R. 1927 Mad. 84=98 Ind. Cas. 549 ; see also A. I. R. 1928 Sind 16=105 Ind. Cas 544 ; 46 I. A. 272=37 M. L. J. 483=17 A. L. J. 997=24 C. W. N. 297=53 Ind. Cas. 131.

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Notes—The question as to what is reasonable time is one of fact. 10 M. L. T. 496. Ordinarily in agreements for sale of property time is not of the essence of the contract, but it is open to a party if it was not originally of the essence to make it of such essence, by service of notice 95 Ind. Cas 614=A. I. R (1926) Nag 435.

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Illustration.

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(a) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails There has been a good payment by B

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Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Notes—A plaintiff in making a demand for the fulfilment of a con defendant, is not required to make an actual tender of money, but it is

has made preparations, with the object of having the money ready in hand, in case the contract is fulfilled. 30 C. 865. P. C.=5 Bom. L. R. 483=8 C. W. N. 25. A vendor is not bound to tender the purchase price unless the purchaser is ready and willing to perform his part of the promise. In a suit for specific performance the strict law as to tender is not applicable. 1923 Sind 50. Unless a special contract to the contrary is definitely proved it must l
for at delivery and that the buyer
default. 1923 Lah. 363. As to the m
Ind. Cas. 304. In a contract for
the goods first breaks the contract by not supplying the same the other party is under no obligation to pay anything and the conduct of the former cannot be justified under s. 51. A. I. R. 1931 All. 539. Party is absolved from duty of delivering goods if

The reciprocal promises contained in the agreement were not inherently capable of simultaneous performance within the terms of

Lah. 198=28 P. L. R. 351=A. I. R. 1927 Lah 176 In a suit for damages for breach of contract plaintiff cannot succeed unless he proves he was ready and willing to perform his part. Buyer must show that he was ready and willing to pay for goods and seller must prove that he was ready and willing to deliver goods 49 M L. J 300=A. I. R. 1925 Mad. 971=86 Ind. Cas. 299; see also A I R 1928 Lah 20=9 Lah. 148; 10 Lah. 143=A. I. R. 1928 Lah. 834; A I R. 1926 Lah. 318=7 Lah. 442; 40 M. L. J. 300=86 Ind. Cas. 299; A. I. R. 1923 All. 220; 79 Ind Cas. 473. Ordinary law as to performance of contracts in ss. 51 and 52 applies where the railway makes a special contract contrary to risk note 1 Pat L. R 336=A. I. R 1924 Pat. 39=77 Ind. Cas 260.

Order of performance of reciprocal promises.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations

A's pro-

Notes.—In a contract consisting of reciprocal promises, the failure of one party to perform his promise is a sufficient ground for the other party avoiding his. 17 P. R. 1898 (F. B.); see also A. I. R. 1927 Oudh 616=1 Luck. 69=101 Ind. Cas. 847; A. I. R. 1928 All. 360=26 A. L. J. 492=115 Ind. Cas. 793.

Liability of party preventing event on which contract is to take effect.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustration.

A for a thousand rupees. B prevents him from doing e elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Notes—If a person makes performance of a contract impossible, he can not claim damages on the basis of a breach of contract. 80 Ind. Cas 949. Repudiation by one does not end obligation unless other party elects to treat it so. A. I. R. 1933 P. C. 233.

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.

54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(*a*) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a freight for its conveyance A does im the performance of B's promise, which B sustains by the non-performance of the contract.

(*b*) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him

him, at a specified price, certain merchandise r a month, and B engages to pay for the te of the contract. B does not pay within the week A's promise to deliver need not be performed, and B must make compensation.

(*d*) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month A does not deliver according to his promise. B s promise to pay need not be performed, and A must make compensation.

Notes.—Where the suit is on the *hundi* alone, and it is shown that the consideration for the *hundi* failed, this section requires the Court to dismiss the suit. 3 M. L. T. 405. Where on a contract for sale of goods the seller agrees to give the buyer a delivery telegram for the goods, sold the provision as to the delivery telegram is a condition of the contract and if for any reason it is broken the buyer is entitled to rescind the contract and sue the seller in damages. 43 M L J 199. In case of failure of promisor to perform part of the contract, whether promisee can rescind the contract, *vide* 30 C. W N. 145 P. C. Party not doing his part of the contract cannot insist on the other doing his part. A. I. R. 1925 Mad. 1029=86 Ind. Cas. 436. Where vendee does not contemplate sale owing to vendor's defective title, vendee need not pay brokerage. A. I. R. 1925 Sind 220=88 Ind Cas. 569 Breach of an essential term of contract alone by one party entitles other party to repudiate contract. Breach of non-essential terms entitles only to damages. A. I. R 1924 Sind 105=76 Ind Cas. 90. Party cancelling contract without justification is precluded from making any defence which would have been open to him in action for damages by other party. 22 Bom L R. 1165=59 Ind. Cas 515.

Effect of failure to perform at fixed time, in contract in which time is essential.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, be-

comes voidable at the option of the promisee, if the intention of the parties *was that time should be of the essence of the contract.*

Effect of such failure when time is not essential.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.

If, in case of a contract voidable on account of the promisor's failure to *perform his promise at the time agreed, the promisee* accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation *for any loss* occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Notes.—This section contains certain provision as to the legal rights of parties to contract when time is of the essence of the contract, and when it is not so; but neither in that section nor in any other legislative p
to when time is to be regarded as of the esse
connected with the subject emanates from the
Equity. 2 *L. B. R.* 99. This section applies to cases
passed by the contract, as much as to contract where
64=6. C. L. R. 582. This section is intended to protect the promisee. 22 M. L. J. 413. Where the stipulation made time the *essence of the contract*, the vendor is entitled to retain the earnest money if the contract is not completed within the time agreed upon between the parties owing to unreasonable delay on the part of the
hould look at substance of
131 Ind. Cas 371=11 Lah.
ssence of contract by express
nstances of particular case.
138 Ind. Cas. 498=36 C. W. N. 285=A. I. R. 1932 Cal. 493; see also 132 Ind. Cas. 580=32 P. L. R. 945=A I R 1931 Lah. 996; A I. R. 1933 Bom. 71=57 B. 292=34 Bom. 292. That time is the essence of contract should be determined from the substance and not merely the letter of the *contract between the parties.* 11 Lah 669=32 P. L. R. 221=A. I R 1931 Lah 205=131 Ind. Cas. 371; see also 15 S. L. R. 21=A. I. R 1921 Sind 197. Ordinarily in agreements for the sale of
pen to a party, if it was not
25 N. L. R. 110=A. I. R.
R. 56=A. I R. 1927 Bom.
ind 49=97 Ind. Cas. 269;
49B 1=26 I
308=26 P. I
48 M. L. J.
109=52 Ind.
not to avoid
agreement b
date must hold. If there is a simple waiver of the right to extension of the original time, a reasonable time will be the proper time. Section 55 para 3 means that the promisee cannot claim damages for non-performance at the original agreed time, not that he cannot claim damages for non-performance at the extended time. 24 Bom. L. R. 687=48 I. A. 175=43A. 257=A. I. R 1922 *P. C.* 178=63 Ind Cas 589. *Unreasonable* postponement of performance by vendee in a contract for sale of land, entitles vendor to terminate contract, although time is not of the essence in such contract. 1921 M. W. N. 94=40 M. L. J. 13=A. I. R. 1921 Mad. 141=61 Ind. Cas. 457; see also A. I. R. 1924 Lah. 51=76 Ind. Cas. 91=4 Lah 327=5 L. L. J. 462. Section 55 of the Contract Act does not lay down any principle differing from that of law of England as to contracts for sale of land. In such cases, equity looks at the substance and not at the letter of the agreement in order to ascertain whether the properties notwithstanding that they named a specific time within which the sale was to be completed, really and in substance intended more than that it should take *place within a reasonable time.* 40 B. 289=43 I. A. 26=30 M. L. J. 186

=20 C. W. N. 744 (P. C). There is no presumption that time is not of essence in a mercantile contract. A. I. R. 1935 Nag. 111.

Agreement to do impossible act.

56. An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

(*a*) A agrees with B to discover treasure by magic. The agreement is void.

[illegible] for the marriage,

[illegible] being forbidden

[illegible] e compensation

(*d*) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated The contract becomes void when war is declared.

(*e*) A contracts to act at a theatre for six months in consideration of a sum, paid in advance by B. On several occasions A is too ill to act The contract to act on those occasions becomes void.

Notes.—According to English law, a contract to do an act which becomes impossible in law after the contract is made becomes void when the Act becomes impossible, but a contract to do an act which becomes impossible in fact does [illegible] the parties, the [illegible] possible in fact. [illegible] second paragraph [illegible] ssible in fact are [illegible] certain [illegible] a case in [illegible] by some [illegible] es something which renders the performance of the contract impossible. 4 A. L. J 778 For the purpose of this section "impossible" may include what has become impracticable. 8 Ind. Cas. 565. But this section does not apply to a case, in which although the consideration of the contract is lost the performance of promise on the other side is still possible. 2 M. 187. Before a contract can be broken on the ground that the acts to be done have become impossible, the Court must be very sure that they are physically impossible. The physical impossibility must go much further than mere difficulty or need to pay exorbitant prices. 17 Bom. L. R. 1087. Mere difficulty in performing a contract or the need to pay exorbitant prices does not bring a case under this section. 57 Ind Cas. 636 Mere difficulty in the performance [illegible] perform it does [illegible] and would not [illegible] . Cas 205=140 [illegible] a contract, must [illegible] rely an impossibility with reference to the ability and circumstances of the promisor; but the Courts will not regard mere economic unprofitableness as equivalent to impossibility of performance. 63 Ind. Cas. 267; 21 C. W N. 573; see also 130 Ind. Cas. 772. Test of impossibility is whether it is practically impossible to carry out the contract within the specified time. (1916) 2 M. W N. 131=35 Ind. Cas. 625. Contract subsequently becoming illegal cannot be enforced 9 Bur. L. T. 99=32 Ind. Cas. 96; 40 B. 570=18 Bom. L. R. 105=33 Ind. Cas. 353; 33 Ind. Cas. 540. Contracts between subjects of countries at peace remain in

abeyance during the continuance of hostilities and can be enforced when peace is established. 42 B. 473=18 Bom. L. R. 915=37 Ind. Cas. 644. But contract enusing to the aid of the enemy or incapable of suspension, is dissolved by the outbreak of war. 45 C. 88=21 C. W. N. 670=26 C. L. J. 62=40 Ind. Cas. 383; 41 M. 225=40 Ind. Cas. 851; 40 Ind. Cas. 526=32 M. L. J. 146; 43 Ind. Cas. 673=33 M. L. J. 410; 11 Bur. L T. 84=48 Ind. Cas. 310. This section does not apply to cases of impossibility due to the default of contracting party himself. 3 Pat. 581=A. I. R. 1924 Pat. 586=78 Ind Cas. 723 So impossibility as an excuse for non-performance must be a physical or legal impossibility and not mearly an impossibility with reference to ability and circumstances 33 C. L. J. 151=A. I. R. 1921 Cal. 305=63 Ind. Cas. 267.

Reciprocal promise to do things legal, and also other things illegal.

57. Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Illustration.

for 10,000 rupees, but that, if B uses
rupees for it.
ly, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

Alternative promise, one branch being illegal.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Illustration.

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Notes.—*Vide* A. I. R. 1931 All. 589; 32 Ind. Cas. 486=30 M. L. J. 62; A. I. R. 1931 All. 113=1931 A. L. J. 571=129 Ind. Cas. 719.

Appropriation of Payments.

Application of payment where debt to be discharged is indicated.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations

(*a*) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the 1st June. He owes B no other debt of that amount. On the 1st June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note

(*b*) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Notes.—A reluctance of the mortgagor to pay compound interest, on the mortgage bond executed by him, is not an indication of his intention that his payments should be first applied to that bond. 26 C. 39 (P. C.)=2 C. W. N 633. It is hardly likely that a creditor to whom interest as well as the principal amount was due would accept a payment in reduction of the principal and leave the interest outstanding. 26 Ind. Cas. 346; see also 63 Ind. Cas. 901=(1921) M. W. N. 411=14 L. W. 391; 19 A. L. J. 465. The debtor's intimation must synchronise with the payment, but the creditor is entitled to make the appropriation at all times up to the time of the trial. 92 Ind. Cas. 947; see also 5 Pat. 326=7 P. L. T. 577=A. I. R. 1926 Pat. 330=94 Ind. Cas. 273; 94 Ind. Cas. 384=A. I. R. 1925 Mad. 792. This section applies to payment of Government revenue. 53 C. 886=43 C. L. J. 468=30 C. W. N.

618=A. I. R. 1926 Cal. 866 ; see also 55 C. 624=47 C. L. J. 12=32 C. W. N. 359. A creditor is entitled to appropriate payment towards interest. 26 C. W. N. 153=63 Ind. Cas. 904 (P. C.).

Application of payment where debt to be discharged is not indicated.

60. Where the debtor has omitt· circumsta ment is at his disc and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Notes.—The Indian Contract Act follo vs the ordinary rule of law in providing that when a debtor has omitted to indicate, and there are no circumstances indicating, to which of several debts a payment is to be applied, the creditor might apply it to any debt actually due and payable to him from the debtor. 26. C 39 (P. C)=25 I. A. 179=2 C. W N. 633 ; 13 C. 164 Where money was paid by a debtor to his

and of appropriation by the debtor, the creditor has the right to pay himself the interest first. 21 C. W. N 1055. Ss 60 and 61 of the Contract Act provide a very simple code of procedure analogous in all particulars to the law of appropriation that prevails in England 1 Pat. L J. 474=35 Ind. Cas. 375 Where payments are made in liquidation of a debt and the amount due on account of interest largely exceeds the amount paid, the creditor is justified in appropriating such payments towards interest. 23 C W. N 534=29 C L J 305=51 Ind. Cas. 88. An amount deposited with a creditor for a special purpose cannot be regarded as a repayment which the debtor can subsequently claim to have appropriated towards any other debt. 59 Ind Cas. 121. Appropriation held not intended towards principal. 145 Ind. Cas. 144=A I R. 1933 Lah. 126. If debtor fails to appropriate creditor is entitled to appropriate payment at whatever manner at any time before suit. 145 Ind. Cas. 611=14 P. L. T 654=A. I R 1933 Pat. 267. In case of running account, no question of appropriation arises. *Ibid.* Where debtor alleges appropriation in a particular way, burden of proof is on the debtor 1927 M W N 73=45 C. L J. 318=31 C. W. N. 566=52 M L. J 715=29 Bom. L. R 791=100 Ind Cas. 668. Where money is received without definite appropriation on the one side or the other, money is first applied in payment of interest and then when it is satisfied in payment of the capital. 26 C. W N. 33=48 I. A 150=41 M 570=23 Bom L. R 644=61 Ind. appropriated to any other principal as well as interest is entitled to appropriate towards in also 23 C. Ind. Cas. 8 Cas. 175 of his filir not inequitable to do so. 37 M. L. J 367=10 L. W 329=52 Ind. Cas 050 · see

61 C. 711.

Application of payment where neither party appropriates.

61. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Notes.—An appropriation of payment ... time
of paying and by the creditor at the time of ... hem
makes the appropriation, the law appropria ... 13
A. L. J. 908=37 A. 649=30 Ind. Cas. 92. ... payments towards arrears of rents it is for him to show that arrears were due and what they amounted to and in the absence of evidence on these points it must be held that he was not entitled to do so. 1922 P. 446 Under the section where neither party makes any appropriation payments are to be applied in the discharge of debts in order of time. 78 Ind. Cas. 910. A creditor can appropriate a payment made by the debtor towards payment of his debts in the absence of presumed or express intention of debtor. 1924, S. 137 Moneys received without any definite appropriation as to principal or interest must first be applied in payment of interest and then in payment of the capital 44 M. 570=48 I. A. 150=19 A. L. J. 465=61 Ind. Cas. 31 (P. C.); see also A. I. R. 1928 Lah. 901; A. I. R. 1923 Oudh 123=25 O. C. 349=77 Ind. Cas. 310; 68 Ind. Cas. 597. So long as notice is not given as to appropriation, it is open to the creditor to alter it and make re-appropriation. A. I. R. 1930 Mad 874. In case of non-appropriation either by debtor or creditor payment should be applied in discharge of debt in order of time. A. I. R. 1935. All. 221.

Cases—41 Ind Cas. 491; 84 Ind. Cas 672.

Contracts which need not be performed.

Effect of novation, rescission and alteration of contract

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(*a*) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted

(*b*) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5, 000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(*c*) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

Notes.—This section is but a legislative expression of the common law; and its provisions do not apply after there has been a breach of the original contract. The parties may make a new contract in substitution of the old contract or may rescind or alter the old contract, and if they do so while the original contract is subsisting and unbroken, the original contract need not be performed. 15 C. 319. If a party to a new contract refuses to perform his promise thereunder, or if there is no completed "contract" the other party is entitled to rescind it and to revert to the former consideration under the old contract 66 P. R 1888. A novation consists in the extinguishment of a former condition of indebtedness and the substitution of another and different agreement. A. W. N. (1883) 254; see also A. I. R. 1934 Lah. 128 This section requires the concurrence of both parties, while s. 63 refers only to unilateral acts. 29 M. L J. 125=29 Ind. Cas. 449=(1915) M. W. N. 408. In cases of novation where the contemplated substituted security itself fails, the parties could not be taken to have intended that the liability under the original contract would also cease. 10 L. W. 466. Substituted contract can be valid without fresh consideration. 1930 M. W. N. 1228=A. I. R. 1931 Mad. 200. Modification or revocation of the contract requires a
... 3 M. L W. 182=A. I. R. 1925
... in evidence for want of stamp,
...) Sind 164=116 Ind. Cas. 111;
... 1931 Rang. 139; A. I. R. 1933
... P. L. T. 506=142 Ind. Cas. 163;
... 313=135 Ind. Cas. 390; A. I. R.
... Luck. 666; A. I. R. 1931 Nag.
113=27 N. L. R. 56; A. I. R. 1932 Nag. 23; A. I. R. 1933 Nag. 57=29 N. L. R.

131=144 Ind. Cas. 745 ; 140 Ind. Cas. 117=A. I. R. 1933 All. 109 ; 1931 A. L. J. 522=A. I. R. 1931 All 560 ; A. I. R. 1932 Mad. 687=36 M. L. W. 432=139 Ind. Cas.
Cas. 33 ; A. I. R. 1933
833. Promissory note
ability is admissible to
I. R. 1933 Mad. 251.
be treated as transfer of actionable claim 139 Ind. Cas. 582=34 Bom. L. R. 837=56 B. 462=A. I. R. 1932 Bom. 506=A. I. R 1932 Bom. 446. Where simple money bond was taken in satisfaction of prior mortgage and suit on mortgage bond was dismissed as plaintiff made material alterations in it, plaintiff cannot sue on original mortgage. 131 Ind. Cas. 593=1931 A. L J 223=A. I R 1931 All. 325 ; see also A. I. R. 1932 Lah. 212=33 P. L R 42=135 Ind. Cas. 673. Where transfer of land is complete, but pronote is found inadmissible, parole evidence can be allowed in suit on original consideration A I R 1933 Pat 575 (F. B)=14 P L T 651. Where hand-note is not payable to any person, it is still admissible to prove loan. 141 Ind. Cas. 767=A. I R 1933 Pat. 159 ; but see A I R 1931 Rang 189=131 Ind. Cas. 510. Essence of novation of contract lies in intention of parties to supersede old by new contract. A. I R. 1935 Oudh 366 ; see also A. I. R. 1935 Bom. 225. Document not excepted under proviso to s. 35, Stamp Act is totally inadmissible in evidence. A. I R. 1935 Nag 54. Where promissory note is inadmissible being insufficiently stamped, the lender can fall back on original contract arising from loan. A. I R. 1935 Mad. 206 ; A I. R. 1935 Cal 102 ; A. I. R. 1935 Mad. 23.

Promisee may dispense with or remit performance of promise.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(*a*) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise

(*b*) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable The whole debt is discharged.

(*c*) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A This payment is a discharge of the whole claim

(*d*) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A without ascertaining the amount gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(*e*) A owes B 2,000 rupees, and is also indebted to other creditors A makes an arrangement with his creditors, including B, to pay them a composition* of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

Notes.—This section not only modifies but is in direct antagonism to the law in England. 15 C. 319. The section is intended to apply not to cases where the whole contract has been supplanted by a new one but to cases where the old contract subsists but there is a voluntary remission of performance of some promise in it, for example, a remission of part of the debt at the time when it becomes payable. Section 63 will not cover a case of a binding promise to dispense with or remit performance in the future unless that waiver is made the subject of a fresh contract because then s. 92 of the Evidence Act will stand in the way.
pensation or
, there must
Bom. L. R.
ense with or remit performance of the promise : and the parties may extend the time for performance by agreement This section does not entitle a promisee to extend the time

*The word "composition" has been substituted for the word "compensation" by the Repealing and Amending Act (XII of 1891).

without the consent of the promisor, with a view to claim heavier damages. 18 M.

parties may e 3. If debt is released at advantage of release, although not a party to the action. 129 Ind. Cas. 890=32 Bom. L. R. 1656=A. I. R 1931 Bom. 123. No fresh consideration is necessary and if time is not essence of contract extension can be granted after expiry of period of performance of promise. A. I. R. 1931 All. 589=1931 A. L. J. 295. It is doubtful whether consideration is necessary for the remission of a part or whole of the contract under s. 63. A. I. R. 1934 Pat. 144=148 Ind. Cas. 501; see also A. I. R. 1935 Lah. 401.

Consequences of rescission of voidable contract.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Notes.—The terms "person" and "party" in this section, are interchangeable terms. They have reference to such a person as is mentioned in s. 11 of the Act, i.e., a "person competent to contract" "Voidable contracts" mentioned in this section seem to refer to such contracts as are spoken of as voidable in section 19 of the Act. 26 C. 381=3 C W N 468. Ss. 64 and 65 of Contract Act are based on there being a case where there is 485=98 P. L. R 1913. certain sum in settle- cover that sum as the urn of it under ss. 64 and 65 of the Contract Act 28 Ind Cas. 57. Words "when contract becomes void" are wide enough to cover case of voidable contract avoided. A. I. R. 1932 P. C. 80 "Benefit receiving under contract" means what party rescinding contract actu- A. L. J 51; Oudh 199= of transfer L. J. 51=A. 50=35 M. L. also reliev-

Obligation of person who has received advantage under void agreement or contract that becomes void.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Illustrations.

(*a*) A pays B 1,000 rupees, in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(*b*) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May He is bound to pay A for them.

(*c*) A, a singer, contracts with B, the manager of a theatre, to sing at his B engages to night, A wil- the contract.

re paid in ad- B for the loss must refund to B the 1,000 rupees paid in advance.

Notes.—This section like section 64 starts from the basis of there being an agreement or contract between competent parties ; and has no application to a case in which there never was and never could have been any contract. 5 Bom. L. R. 421. This section provides for the restitution of any advantage received under an agreement or contract. The first branch includes not only agreements which are discovered to be void, but also those which are void *ab initio* by reason of a principle of law. 33 B. 411=3 Ind. Cas. 748 The relief contemplated by this section is that the party prejudiced by mistake should be relieved from the consequences thereof. 14 M. L. J. 443 ; 11 A. 47 P. C. ; 2 A 173. A contract which is not in accordance with statutory requirements is no contract at all, and does not become void and is not discovered to be void in the sense of this section. 46 Ind Cas. 326 ; 35 M L J 561=44 Ind. Cas 319 This section has no application where the contract embodies a purpose known to be illegal to which both sides are parties. 54 Ind. Cas 791. Time at which agreement is discovered to be void date of agreement. 142 Ind Cas 7=1933 M. W. N. 190 ; 35 Bom. L. R. 319=1033 A. L. J. 175=37 C. W. N. 319=57 C. L. J. 166=54 A 1067=60 I. A 13=A I. R 1933 P. C 63 (P. C) Words "when contract becomes void" are wide enough to cover case of voidable contract
461=34 Bom. L. R. 771=1932 A. L. J.
i inception, it must be held to be dis-
. 137 Ind. Cas. 574=8 Luck 1=A. I. R.
ie of *quantum valebat* applies. 144
L W. 429. Benefit received under
412=A. I. R. 1933 Mad 145. Where after confirmation of sale judgment-debtor is found to have no saleable interest, purchaser can maintain suit to recover money paid if deprived of property by holder of paramount title. A. I. R. 1932 Lah. 401 (F B)=13 Lah. 618=33 P. L R. 649. Where contract is void for non-compliance of provisions of ss. 44 and 45, Madras Municipalities Act, neither principle of *quantum meruit* nor that of *quantum valebat* applies. 141 Ind Cas 781=37 M L. W 429=A. I. R. 1933 Mad. 332. Where suit for wages was based on alleged contract and contract was not proved relief on *quantum meruit* cannot be granted unless asked. A I. R. 1933 Mad. 344=37 M L. W. 313=1933 M. W. N 126=142 Ind Cas. 683 Where contract with Municipal Board is void under s. 97, U P. Municipalities Act, as not being under seal, no relief can be given to person relying on such contract even on *quantum meruit* 137 Ind. Cas 574=8 Luck 1=9 O. W N 461=A. I R. 1932 Oudh 193 (F. B) The right to claim relief on the *quantum meruit* basis is not necessarily based on agreement between the parties and that if a party is otherwise entitled to claim it relief should be given 1934 M W N. 592=A. I. R. 1934 Mad. 335=149 Ind Cas 503=39 L. W. 508 ; see also A I R 1927 Cal. 46, A I R. 1930 Mad. 132 ; A. I. R 1933 Mad 145 ; see also A I R 1934 Mad 480=67. M. L. J. 38=1934 M W N. 1163 ; A I R 1934 Lah 979 The words "when a contract becomes void" in this section covers the case of voidable contract if avoided. 151 Ind. Cas 1=36 P. L. R 233=A. I. R 1934 Lah 853 (F B) When there is no breach on the part of the purchaser he is entitled to refund. A I. R. 1934 Nag. 248=17 N. L J. 135=152 Ind. Cas 644. Where mortgage was without permission of Deputy Commissioner and parties knew that sanction was necessary but did not know that contract was void, the case falls within S 65. A. I. R. 1935 Lah. 401 ; see also A I. R. 1935 Nag. 58 ; A. I. R. 1935 All. 256. Where the bond is by a minor, who did not make any misrepresentation, the plaintiff cannot get any relief A I. R. 1935 Cal. 198 Where a mortgage effected by the Receiver of the insolvent's property is set aside by the District Judge, and the adjudication is annulled, the mortgagee in a suit by mortgager for possession is entitled to remain in possession until he is repaid by the mortgagor the sum advanced on the security of the land. A I R. 1935 Lah. 112

Mode of communicating or revoking rescission of voidable contract.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

Notes.—Where a legal practitioner is ready and willing to conduct in Court the legal business of his client but is prevented from doing so, by an act or omission of his client, the latter is not entitled to claim refund of the fee from the former on account of his not appearing in the case. 22 P. W. R. 1907=42 P. L. R. 1907.

Case —26 B. 504.

CHAPTER V.

Of certain Relations resembling those created by Contract.

Claim for necessaries supplied to person incapable of contracting, or on his account.

*68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(a) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property

(b) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Notes —As section 68 of the Contract Act is not controlled by s. 31 of the C. P. Court of Wards Act, the estate of a Government ward is not exempt from liability for necessaries supplied to the ward 17 C P. L R. 57; but now see C. P. Act 1 of 1915. Under the Hindu Law a minor under an obligation to provide out of the family property the funds necessary for performing the marriage of his sister in a manner suitable to the social position of the family and its pecuniary resources The provision made for such a purpose is necessary within the meaning of this section. 61 Ind. Cas. 279. This section does not apply to a case of mortgage made by the father of certain minors. When there is anything to show it was for supplying necessaries to the minors. 81 Ind. Cas. 1041. Where guardian borrows for necessaries, minor's estate is liable. 139 Ind. Cas. 383=35 M. L. W. 397=A. I. R. 1932 [illegible] 58=145 Ind. Cas. 350. [illegible] 16 N. L. J. 58. But [illegible] r obsequies of father [illegible] . A. I. R. 1933 Oudh [illegible] effected by guardian of ward's property. 11 Rang. 193=A. I. R. 1933 Rang. 83.

Cases.—32 A. 325; 20 B. 61; 10 O C 38; 21 C 872; 22 M. 314; 50 Ind. Cas. 324; 64 Ind. Cas 851; 95 Ind. Cas. 548.

Re-imbursement of person paying money due by another in payment of which he is interested.

69. Person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

*This section has been amended in C P. by C. P. Act 1 of 1915.

Notes.—This section applies where one person pays money which another is ... :ction only applies ... Though a person ... he is not actuated ... der this section. 12 C. 213 ; 11 A. 234. To attract the provisions of this section pecuniary interest even in the shape of detriment or inconvenience will entitle the plaintiff to take advantage of these provisions. Ss 69 and 70 of the Contract Act should be liberally interpreted to advance substantial justice. 26 M. L. J. 66. An attachment of crop raised on ... ta is legal and s. ... es not apply to a ... this section the interest of the person lending the money *must be such as would be recognised* by law. 61 Ind. Cas. 278. "A person who is interested' is one who really believes that he must make payment in his own interest A I R. 1932 All 332=1932 A. L. J. 63=54 A. 140 ; see also A. I. R. 1933 All 908 Plaintiff's utmost good fith must be established. A I. R. 1931 Mad 207=53 M 952 ; A. I. R. 1933 Oudh 478. Mortgagee paying Government revenue is entitled to recover from mortgagor. 144 Ind. Cas. 392=A. I R. 1933 Rang 112 Mortgagor is entitled to contribution from his co-mortgagors of amount paid by him in Court to set aside sale in execution of mortgage decree but cannot claim statutory compensation. 134 Ind. Cas 139=10 Pat. 528=13 P L T. 21=A. I. R. 1931 Pat. 394 ; see also A I R 1932 Oudh 222=9 O. W. N 414=8 Luck. 79=138 Ind Cas 137. Where joint-decree for rent is satisfied by co-judgment-debtor in possession of lease-hold property, other co-judgment-debtor is liable in suit for contribution 132 Ind. Cas 107=10 Pat. 168=12 P. L. T. 868=A. I. R. 1931 Pat. 234 Person making payment in respect of ... a charge 136 Ind. Cas. 66=54 A. ... Where a *person not personally bound* ... ause he held a mortgage upon the ... lly bound to pay the amount within the meaning of s 69. A. I R. 1934 Nag 84=17 N L J 135=152 Ind Cas 644. A person's right under s. 69 and 70, Contract Act, can be kept separate from his rights of subrogation under s 92 T P. Act, and the right of contribution which is a personal one, should be enforced personally, and therefore the defendant should not be made to pay more than their respective shares. *Ibid.* Section 69 applies to suits for contribution where both the plaintiff and the defendant were liable for the money paid by the ... J 423=38 C. W. N 758=A ... Where a decree-holder who ... in execution of a decree pays the arrears of revenue he is not entitled to be reimbursed by the judgment debtor and ss 69 and 70 Contract Act will not apply, as under s. 142 of the U. P. Land Revenue Act (3 of 1901) the judgment debtor is not bound to pay it A. I. R. 1934 All. 712=151 Ind. Cas. 351

Obligation of person enjoying benefit of nongratuitous act.

70 Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered

Illustrations.

(*a*) A, a tradesman, leaves goods at B's house by mistake B treats the goods as his own. He is bound to pay A for them.

(*b*) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Notes —The principle enunciated by this section recognizes what may be said to ... 's paid money on behalf of ... other accepts the benefit ... receive the sum paid by ... V. N. (1885) 219 ; A. W. N. (1887) 1 ; 18 M. 88. This section ought not to be so read as to justify the officious

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract if it is caused by such neglect or refusal

Notes.—Where a legal practitioner is ready and willing to conduct in Court the legal business of his client but is prevented from doing so, by an act or omission of his client, the latter is not entitled to claim refund of the fee from the former on account of his not appearing in the case. 22 P. W. R. 1907=42 P. L. R. 1907.

Case.—26 B. 504.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Claim for necessaries supplied to person incapable of contracting, or on his account.

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Illustrations.

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Notes.—As section 68 of the Contract Act is not controlled by s. 31 of the C. P. Court of Wards Act, the estate of a Government ward is not exempt from liability for necessaries supplied to the ward. 17 C P L R. 57 ; but now see C. P. Act 1 of 1915. Under the Hindu Law a minor under an obligation to provide out of the family property the funds necessary for performing the marriage of his sister in a manner suitable to the social position of the family and its pecuniary resources The provision made for such a purpose is necessary within the meaning of this section. 61 Ind. Cas. 279 This section does not apply to a case of mortgage made by the father of certain minors When there is anything to show it was for supplying necessaries to the minors. 81 Ind. Cas 1041. Where guardian borrows for necessaries, minor's estate is liable. 139 Ind. Cas. 383=35 M. L. W. 397=A. I. R. 1932 Mad. 696 ; see also A I. R 1933 Mad. 285=16 N. L. J. 58=145 Ind. Cas. 350. Sister's marriage constitutes "necessary". 145 Ind. Cas 350=16 N. L. J. 58. But acknowledgment by mother as guardian of debts borrowed for obsequies of father is not binding on minor as such money is not for minor's benefit. A. I. R. 1933 Oudh 132=11 O. W. N. 188. Section 68 does not validate mortgage effected by guardian of ward's property. 11 Rang. 193=A. I. R 1933 Rang. 83.

Cases.—32 A. 325 ; 20 B. 61 ; 10 O. C. 38 ; 21 C. 872 ; 22 M. 314; 50 Ind. Cas. 324 ; 64 Ind. Cas 851 ; 95 Ind. Cas. 548.

Re-imbursement of person paying money due by another in payment of which he is interested.

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Illustration.

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Notes.—This
bound to pay. 17 M.
to payments made
may be interested in the payment yet if, in making the payment, he is not actuated by the motive of protecting his own interest, he cannot recover under this section. 12 C. 213 ; 11 A. 234. To attract the provisions of this section pecuniary interest even in the shape of detriment or inconvenience will entitle the plaintiff to take advantage of these provisions Ss. 69 and 70 of the Contract Act should be liberally interpreted to advance substantial justice. 26 M L. J. 66. An attachment of crop raised on one portion of the land included in the patta for arrears under the patta is legal and s. 69 of the Contract Act applies (1915) M. W. N 643 This section does not apply to a suit for contribution. 29 M. L J. 639. To establish liability under this section the interest of the person lending the money must be such as would be recognised by law. 61 Ind. Cas 278. "A person who is interested" is one who really believes that he must make payment in his own interest. A I. R. 1932 All 332=1932 A. L. J. 63=54 A. 140 ; see also A. I. R 1933 All 908 Plaintiff's utmost good faith must be established. A I. R 1931 Mad 207=53 M 952 ; A I. R. 1933 Oudh 478. Mortgagee paying Government revenue is entitled to recover from mortgagor. 144 Ind Cas. 392=*A I R 1933 Rang 112 Mortgagor is entitled to contribution from* his co-mortgagors of amount paid by him in Court to set aside sale in execution of mortgage decree but cannot claim statutory compensation. 134 Ind. Cas. 139=10 Pat. 528=13 P L T. 21=A. I. R. 1931 Pat. 394 ; see also A I. R 1932 Oudh 222=9 O. W. N 414=8 Luck. 79=138 Ind Cas 137. Where joint-decree for
sion of lease-hold property, other
132 Ind Cas 107=10 Pat. 168=
making payment in respect of
charge. 136 Ind. Cas. 66=54 A. 140=1932 A. L. J 63=A I. R. 1932 All. 332. Where a person not personally bound by a maintenance decree, is only impleaded because he held a mortgage upon the property charged by the decree, he is not legally bound to pay the amount within the meaning of s. 69. A I. R. 1934 Nag 84=17 N L. J. 135=152 Ind. Cas 644. A person's right under s. 69 and 70, Contract Act, can be kept separate from his

money
J 423=38 C. W.
Where a decree-
in execution of a
decree pays the arrears of revenue he is not entitled to be reimbursed by the judgment debtor and ss. 69 and 70 Contract Act will not apply, as under s. 142 of the U. P. Land Revenue Act (3 of 1901) the judgment debtor is not bound to pay it. A. I. R. 1934 All. 712=151 Ind. Cas. 351.

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Illustrations.

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(*b*) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Notes.—The principle enunciated by this section recognizes what may be said to
as paid money on behalf of
other accepts the benefit
receive the sum paid by
V. N. (1885) 219 ; A. W. N.
as to justify the officious

interference of one man with the affairs or property of another, or to impose obligations in respect of services which the person sought to be charged did not wish to have rendered. 12 C. P. L. R 4 If there is no agreement between a pleader and the client on the subject of his remuneration the pleader can claim reasonable

160 P. R. 1888. A person
epting the benefit when
; (1912) M. W. N. 956;
he section the necessity
d. Cas. 309=2 L. W. 329;
does not apply to cases

ed in paying the money.
een done is or is not
for another person. A I. R. 1931 Mad. 51. Money paid for another cannot be recovered if he is not benefited. 132 Ind. Cas 242=8 O. W. N. 243. Section 70 applies to corporations making contracts. 140 Ind Cas. 737=10 Rang. 522=A. I. R. 1932 Rang. 176 Where contract is invalid and unenforceable, decree can be passed against party who has been benefited on principle of *quantum meruit.* 141 Ind. Cas. 23=A I R 1933 Pesh 16. Person benefited must have opportunity to accept or reject benefits. 129 Ind. Cas. 828=33 M. L. W. 284=A. I. R. 1931 Mad. 51. Payment for benefit of another is not sufficient, obligation to pay is necessary. 128 Ind Cas 907=32 Bom L. R 1376=A. I R. 1931 Bom. 39. Where lease is invalid landlord can claim compensation for period of tenant's possession. 140 Ind. Cas. 621=13 Lah. 561=33 P. L R 1051=A. I. R 1933 Lah. 15. A having one-half share in property in previous litigation brought against A, B and C defended that litigation to safeguard his interest, he cannot bring suit against B and C for contribution and he cannot succeed either in law or in equity. 141 Ind. Cas. 68=34
; see also A. I R. 1932 Mad. 146=61 M. L. J.
money was lent on pronote and pronote was
admissible, creditor can recover his money inspite
of s. 91 Evidence Act, by orally proving advance. A. I R. 1932 Oudh 235 (F. B.) =7 Luck 666; see also A I. R. 1933 Nag. 57=29 N. L. R 31. In a suit for contribution for costs of repairs to property in which several persons are interested, work must have been done in part at least for benefit of defendant and the defendant must be proved to have been in a position to exercise option whether or not to avail himself of benefit. A I. R. 1932 Mad. 151. Section 70 does not apply to minors. A. I. R. 1931 Lah. 344=135 Ind. Cas. 177=33 P. L R 1090 Price can be claimed for goods delivered. 145 Ind Cas. 687=A. I. R 1933 Lah 14. Where a mortgagor passes sale deed to stranger and stranger redeems property sold to him, he can recover this amount from mortgagor as his payment for redemption was lawful. 128 Ind. Cas. 907=32 Bom. L. R. 1376=A. I. R. 1935 Bom. 39; see also A. I. R. 1932 All. 32=1931 A. L J 601; A. I. R. 1933 All 21=54 A. 975=1932 A. L. J. 986. Where in a suit on promissory note, execution was not properly proved but benefit of loan taken was proved, the benefit should be restored. A. I. R. 1934 All. 390. Where the villages have utilized water from the pyne on the construction of the *bandh*, contribution towards the construction is payable on account of the villages under s. 70. A. I. R 1934 Pat. 346=150 Ind. Cas. 1131. One party is not entitled to call for contribution from another party,
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morality.
To support such a suit there must be an obligation, express or implied, to repay.
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Cal. 347.

Responsibility of finds of goods.

71. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

Liability of person to whom money is paid or, thing delivered by mistake or under coercion.

72. A person to whom money has been paid or anything delivered, by mistake or under coercion, must repay or return it.

Illustrations.

(*a*) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C C is bound to repay the amount to B.

(*b*) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

Notes.—

the money, w

This section,

or under coercion must repay it, implies that the money was not really due to the person to whom it was paid 43 A. 272=19 A L J 41=60 Ind Cas. 881. Money paid under common mistake of fact is recoverable A. I. R 1922 Cal 1 ; see also 23 Bom L. R. 939=A I R. 1921 Bom 93 , A I. R 1928 Cal 865 ; 50 A. 818=26 A. L. J. 753=A I. R 1928 All 500 ; A. I. R. 1928 P C 261=29 M. L. J 72 ; A. I. R. 1935 Mad 287 ; 48 M. 925=49 M L J. 228=A. I. R. 1925 Mad 125 ; 78 Ind. Cas. 794 ; 56 B 501=A I R 1932 Bom 386 ; A. I R 1934 Rang 66 Deposit of amount after sale under order 21, rule 89 C P. Code is invo'untary and cannot be recovered from decree holder under s 72. 35 Bom L R. 462=57 B 601=A. I. R. 1933 Bom. 239 ; see also 140 Ind. Cas. 171=56 B. 501=A I. R. 1932 Bom. 386 ; 54 C L. J. 302=36 C. W N. 238=A I. R 1932 Cal. 108 , A I. R 1934 Pat. 605 ; A I. R. 1934

Mad. 753. But where consideration fails in part, an action for money had and received does not lie 34 Bom. L. R. 791=56 B 501=A. I R. 1932 Bom. 386.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

Compensation for loss or damage caused by breach of contract.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured

om a breach of

ience caused by

Illustrations.

(*a*) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price saltpetre of like quality at the time

there take on board, on the first of ing it to Calcutta, the freight to be Bombay, but A has opportunities of terms as advantageous as those on lf of those opportunities, but is put to receive compensation from B in

rice, no time being the rice if tendered , the amount, if any, the rice at the time when A informs B that he will not accept it

(*d*) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the price which B can obtain for the ship at

(*e*) A, the owner of a boat, contracts for sale at that place, starting on a specified day The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract After that date, and before the arrival of the cargo, f the compensation payable to B by A is the ould have obtained for the cargo at Mirzapur, if forwarded in due course, and its market-price at the time when it actually arrived.

(*f*) A contracts to repair B's house in a certain manner, and receives payment in B is entitled to recover

first of January, for a

way of compensation, price for which B could hire a similar ship for a year on and from the first of January.

(*h*) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron B must pay to A, by way of compensation, the difference and the sum for which A could have obtained

rier, a machine, to be conveyed, without delay, ll is stopped for want of the machine. B un- machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(*j*) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his

deliver to B, by a fixed day, for a specified does not deliver the piece of machinery at the s obliged to procure another at a to A, and is prevented from per- l person at the time of his contract ed to A), and is compelled to make compensation for breach of that contract A must pay to B, by way of compensation,

the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(*l*) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted
C A builds the house so
has to be rebuilt by B, who,
ived from C, and is obliged
. A must make compensa-
t lost, and for the compen-
sation made to C

(*m*) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation B is entitled to be reimbursed this sum by A.

(*n*) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day B in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment

(*o*) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price, B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(*p*) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(*q*) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season The cloth is not delivered till after the appointed time, and too late to be used that year in making caps B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture

(*r*) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the 1st of January, and B, after being, in consequence, detained in Calcutta for sometime, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Notes.—This section not only confines the right of relief to the party who suffers but provides how his loss is to be measured, what it is to include and what to exclude, and what circumstances The Court must take into account in estimating the loss. Hence in cases of breach of contract, it is not permissible to the aggrieved party to file a suit to recover the price of goods in dispute. Under the Indian Contract Act, the aggrieved party must sell the refused goods and then seek to recover the loss if any occurring on such rate. 11 Bom. L. R.; 335 10 Bom. L. R. 1113. 4 Bom. L. R. 818, 5 M. L T. 215; 4 Bom. L. R. 814. The rule in *Flurean* v.

some definite steps in the vendor's power. The rule in *Flurean* v. *Thornhill* is not the law in this contract for sale
of immovable prope make a good
title, the damages mus parties expressly
or impliedly contract t liable for dama-

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.]

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(a) A contracts with B to pay B Rs 1,000, if he fails to pay B Rs. 500 on a ... from A

... he will ... h com-

... pear in ... e whole penalty.

... 1,000 with interest at 12 per cent. ... n case of default, interest shall be ... default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.*

... epay him by deli- ... that, in the event ... , he shall be liable ... l B is only entitled to reasonable compensation in case of breach.*

... a loan of Rs. 1,000 by five equal monthly instal- ... lefault of payment of any instalment the whole ... is not by way of penalty, and the contract may ... *

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due This is a stipulation by way of penalty.*

Notes—In cases of breach of contract covered by this section, the question is one of intention, and consideration is to be had as to whether the parties have ascertained the compensation due on a breach of the obligation contained therein, and as to whether the sum to be paid is "the sum named" in the contract as payable in case of breach. 105 P. R 1887. The question whether the provision as to a higher rate of interest is to be treated as liquidated damages or as a penalty is a question of fact to be decided on a consideration of the whole instrument in each case. 51 P. R. 1879; 25 P. R. 1879. In the case of the breach of a penal contract the plaintiff is entitled under this section to reasonable compensation and not to the full amount fixed or agreed upon. 3 P. R. 1875. The question whether any provision in a document is a penalty or not is one for the Court to determine. 36 M 229 (F. B) Although this section was originally framed to deal with the doctrine of penalty, and liquidated damages as understood in the law of England, it is in its present form comprehensive enough to include cases where there is a stipulation for payment of interest at a specified rate, if the principal or part thereof is not paid on the due date, because it covers all cases where the contract contains any stipulation by way of penalty. 21 C. L. J. 79 = 19 C. W. N. 775 A stipulation in the kabuliyat that if paddy is not paid by a certain time half as much again would be required to

* Illustrations, (d) (e), (f) and (g) have been added by the Indian Contract (Amendment) Act (VI of 1899). s. 4 (2).

discharge the arrears is a stipulation by way of penalty and comes under s. 74 with the result that the landlord will get reasonable compensation in the discretion of the Court. 58 C. 84 If the Court thinks that the stipulated rate of interest is penal the Court should award some compensation for default at a reasonable rate. 130 Ind. Cas. 569=A. I R. 1931 Mad 137 Condition imposing punishment is penalty. A. I. R. 1933 Oudh 291=10 O. W. N. 759. Stipulation for increased interest from date of
O. W. N.
54 C. L. J.
ered to see
.. 1932 Cal.
689. In a compromise decree, executing Court can interfere with penal stipulation. 55 A. 334=A. I. R 1933 *All.* 252 (*F. B*). *Whether a certain stipulation is by way of* penalty depends on the circumstances of the case. A. I. R. 1934 Pat. 16; see also A. I. R. 1934 Lah. 321=36 P. L. R. 178=150 Ind. Cas. 878; A. I. R. 1934 All. 152=1934 A. L. J. 371=56 A. 496. In the absence of any other circumstances high rate of interest does not make it penal or unconscionable A. I. R. 1934 Cal. 511=38 C. W. N. 182=151 Ind. Cas 155. What is resonable compensation must depend on the circumstances of each case. A. I. R. 1934 Pat. 16; see also 60 C. 1379=149 Ind. Cas 858=A I. R. 1934 Cal 285; 58 B. 610=36 Bom. L. R. 798=A. I. R. 1934 Bom 370. Interest on interest cannot be reduced by Court under this section when it is stimulated in the mortgage deed. 1934 M. W. N. 971=40 L. W. 641=A. I. R 1934 Mad 695=67 M L. J 653 Court is competent to give relief to a party even in a consent decree, where the provisions are of a penal character. 9 Luck. 387=148 Ind Cas. 251=11 O. W. N. 92=A. I. R. 1934 Oudh 44. An enhanced rate of interest in the event of consecutive defaults is a stipulation by way of penalty. A I. R. 1934 Pat 16; A. I. R 1932 Nag 169; 34 C. W. N. 905; but see 53 *C L. J* 516=*A I R. 1931 Cal. 772; A. I R. 1933 Lah. 523; 11 Lah. 635*=32 P L R. 161=A I. R. 1931 Lah 120 Interest need not be reduced, where amount swelled for laches on borrower's part. A. I R. 1931 Nag. 91=13 N. L. J. 213.

contrary to law nor voidable at instance of mortgagor. A. I. R. 1935 Lah. 456. A clause that on default in any one of instalments, whole sum is liable to be paid is not in the nature of penalty A I. R 1935 Rang 341; see also A. I. R. 1935 Mad. 385. Plaintiff must prove exact amount of damages. A. I. R. 1935 Pesh. 57. Where increased rent is reserved in case lessee commits breach of covenant in lease deed, such increased rent is not penalty but is in nature of liquidated damages. A. I. R. 1935 Mad. 335.

Party rightfully rescinding contract entitled to compensation

75. A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre, and B, in consequence rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

Notes.—If after a
covers facts which, if
legal proceedings, he is
he can claim damages. 60 P. R. 1882. An offer to settle a claim at a certain amount could not be treated as a promise to pay the amount. 42 A 390=18 A. L. J. 377.

CHAPTER VII.

Sale of Goods.

Sections 76 to 123 have been repealed by Act 32 of 1930.

CHAPTER VIII.

Of Indemnity and Guarantee.

"Contract of indemnity" defined.

124. *A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."*

Illustration

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Notes.—The Contract Act draws a distinction between contracts of indemnity and contracts of suretyship. So far as the contract of indemnity is concerned the person who indemnifies can, on payment or discharge of the obligation sue, but the suit in the absence of any assignment can only be in the name of the promisee In such a case there is no direct right of action on the original contract to the person who indemnifies against the person whose contract has caused loss 49 M. 156=95 Ind. Cas. 154=A I. R. 1926 Mad. 544 In the case of a contract of indemnity it is not necessary that actual damage should be caused before the party affected can sue on it. 92 Ind [Cas 715=(1926) M. W. N. 459=A. I R 1926 Mad. 597. The conditions required by the English law and the Contract Act for a contract of suretyship are also required for such a contract under the Hindu Law There must be a creditor, a principal debtor and a guarantor or surety, who makes himself liable for the liability of the principal debtor. The relationship may be established by an agreement between the principal debtor and the surety to which the creditor is a party. This is the contract coming under s. 126. It may also be established by an agreement to which the creditor is not a party where there is a collateral contract between the surety and the principal debtor that one of them shall be liable on the default of the other. This is the contract under s. 132 of the Act But where the contract between the surety and the creditor is not a collateral undertaking but creates an original liability as between those two parties then the contract is not one of surety but one of indemnity within this section of the Contract Act 46 Ind Cas. 27=3 Pat. L. J. 396=4 Pat. L. W. 437 ; see also (1902) 1 K. B. 778 ; (1894) 2 Q. B 885.

Rights of indemnity-holder when sued.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

ny suit in respect

suit if, in bring-

omisor, and acted

e of any contract

of indemnity, or if the promisor authorized him to bring or defend the suit ;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

Notes.—Promisee can recover costs properly incurred in resisting or ascertaining the claim to which indemnity relates. Promisor can not impeach a decree passed against promisee. 22 N. L R 49=A. I. R. 1926 Nag 109 In the case of a contract of indemnity, a decree passed against a promisee cannot be impeached by the promisor. Costs reasonably incurred in resisting or reducing or ascertaining the claim can be recovered. 88 Ind. Cas. 699. This section does not contemplate the assess-

ment of future damages, but refers to the amount which has been paid whether under compulsion of an adjudication or under the terms of a proper compromise of the suit. 50 Ind. Cas. 611=15 N. L. R. 78. Actual loss or damage need not be proved to get compensation A. I. R. 1931 All. 754=1931 A. L. J. 687=53A. 946. Where a purchaser of property agrees to release the property of an existing mortgage and on default to do so if the vendor is made liable for the debt further agrees to indemnify the vendor, a suit by the vendor when he has not paid anything to the mortgagee is not in the nature of suit to enforce a trust and is premature so far as this action is concerned. A I. R. 1933 Cal. 641. In a contract of indemnity, indemnifier is not liable to make good loss unless indemnified has incurred actual loss A. I. R 1935 Rang. 205.

'Contract of guarantee," "surety," "principal debtor" and "creditor."

126. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety:" the person in respect of whose default the guarantee is given is called "the principal debtor," and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written.

Notes.—A mere recommendation by C that A should buy goods of B will not entail on C the consequences that might flow from his guaranteeing that A will not suffer any loss if he takes up B's offer of sale. 97 Ind. Cas 866. This section makes no difference between an oral and a written guarantee ; the former being as equally binding as the latter. 17 A L. J 1068=52 Ind. Cas. 684. The word "liability" in this section means a liability which is enforceable at law, and if that liability does not exist there can not be a contract of guarantee. 42 B. 444=20 Bom. L. R. 447=46 [illegible]

before a sale has taken place, wh[illegible] respect of whose default the gu[illegible] N. L. R. 205=148 Ind. Cas. 585. A [illegible] ted, can be enforced under this [illegible] =57 M. 688. Where a person [illegible] other persons, it is contract of guarantee. 138 Ind. Cas 879=28 N. L. R. 325= A. I. R. 1932 Nag 62. When one of joint promisors pays the entire debt he is not a surety. A. I. R. 1933 Mad. 39=55 M. 949=63 M. L. J. 615=1932 M. W. N. 969.

Consideration or guarantee

127. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

(*a*) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise

(*b*) A sells and delivers goods to B C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(*c*) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Notes—A promise to withdraw an order of arrest against the principal debtor, issued under circumstances, in which nobody could cause his arrest under the order, was held not to amount to a "promise made for his benefit" within the meaning of this section. U. B. R. (1897-1901) vol. II. 335.

Surety's liability.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

Notes —In the absence of any contract to the contrary the liability of a surety is co-extensive with that of the principal debtor. 16 C. P. L. R. 76. Inspite of the co-extensiveness laid down in this section, the same legislature, which there so enacted, might subsequently vary or modify that provision. 5 B 647. Ordinarily surety must pay interest until satisfaction. 9 S. L R 237. A surety's liability can be limited by special contract. 95 Ind. Cas 707 (2)=A. I. R. 1926 Nag. 448. Where an agreement itself cannot be enforced but only the equities arising in favour of the parties out of the subsequent acts of both parties can be enforced under the doctrine of part performance, the liability of the surety under the contract cannot be enforced. 95 Ind. Cas 824=A. I. R. 1926 Nag 466. Ordinarily surety must have interest *until satisfaction* A. I R. 1925 Sind 164 A surety for payment of interest of a mortgage debt is liable to pay interest up to the date of redemption 78 Ind. Cas. 868. Under this section the death of the principal debtor does not discharge the surety from his obligation. 69 Ind Cas. 557 Where surety executes bond for regular attendance of accused and accused absconds but surety amount is realized from property of accused, surety is not relieved of his liability. 1933 Cr. C. 1074=A. I. R 1933 Sind 320. Onus of proof that liability is limited is on surety A. I. R. 1935 Lah. 729. Creditor is not bound to exhaust remedies against principal debtor before proceeding [illegible] his section only explains the quantum of a [illegible] contract do not limit it, and has no referenc[illegible] e principal. 63 Ind. Cas. 454 ; 19 B. 697 ; 5[illegible] omise made for the benefit of the principal [illegible] surety for giving [illegible] liability of a surety is co- [illegible] A creditor is not bound to [illegible] surety and a suit may be maintained against the surety though the principal has not been sued. 98 P. R. 1919=50 Ind. Cas. 583 The liability of a surety is co-extensive with that of the principal debtor. 27 Ind Cas. 309. A surety is entitled as such to insist upon a rigid adherence of terms of his (surety's) obligation by the creditor and can not be made liable for more than he has undertaken. 134 Ind. Cas. 1100=A. I R 1931 Oudh 430. Unless it is otherwise provided for by the contract, a right of action against a surety will generally arise at the same time as a right of action against the principal debtor. A. I. R. 1931 Lah. 691 ; see also 35 C W. N. 986 P C. ; 1931 A. L. J. 631. Where surety bond is not registered, no charge on *property can be claimed. A. I. R. 1931 Oudh 310=8 O. W. N 544 In case of* failure to pay by judgment-debtor surety can be proceeded against as if he was [illegible] I. R. 1934 Pat 52=147 Ind [illegible] 682=148 Ind Cas 639 Where [illegible] *money misappropriated cannot* be enforced against surety's widow. A. I. R. 1933 Nag. 162=144 Ind Cas 54 Where surety's liability arises after certain period, claim should be preferred soon after that period. A. I. R. 1931 Oudh 310=8 O W. N. 544=132 Ind. Cas. 798

"Continuing guarantee."

129. A guarantee which extends to a series of transactions is called a "continuing guarantee."

Illustrations.

[illegible] ll employ C in collecting the rent of B's [illegible] to the amount of 5,000 rupees, for the due [illegible] nts. This is a continuing guarantee.

(*b*) A guarantees payment to B, a tea-dealer, to the amount of £100, for any [illegible] C. B supplies C with tea to above the [illegible] rwards B supplies C with tea to the value [illegible] e given by A was a continuing guarantee, [illegible] extent of £100.

[illegible] price of five sacks of flour to be delivered [illegible] B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Notes.—As to whether liability of surety for administrator is a continuing one, *vide* 31 A. 56=A. L. J. 19=1 Ind. Cas. 143 ; 136 Ind. Cas. 407=1931 P. L. J. 793 =61 M. L. J. 191=54 C. L. J. 269=59 C. 320=A. I. R. 1931 P.C. 224. A license to sell liquor for a period of three years was granted to a person on the faith of a guarantee The license was granted as a single act done once for all. The guarantee guaranteed payment of eleven instalments. *Held*, that it was not a continuing guarantee, as there was no series of transactions. 96 Ind. Cas 248=28 Bom. L. R. 662=A. I. R. 1926 Bom. 465. A continuing guarantee must refer to series of transactions some of which are unknown at the time A. I. R. 1925 Nag. 7. A continuing guarantee must refer to a series of transactions of which, when the guarantee is given some are unknown and indefinite or not certain to come into existence. The fact that the amount was payable by instalments does not make it a continuing guarantee. 1925 Nag 7 The guarantee of fidelity in a place of trust, as for instance the post of Khazanchee of a bank for a fixed or determinable period and of a permanent character, is not a continuing guarantee which is defined by this

of transactions" and is therefore
L. J. 228=58 Ind. Cas. 1 (P. C.).
A. L. J. 74 ; 129 Ind. Cas. 897.

Revocation of continuing guarantee.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(*a*) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(*b*) A guarantees to B, to the extent of 10,000 rupees that C shall pay all the bills that B shall draw upon him. B draws upon C C accepts the bill. A gives notice of revocation C dishonours the bill at maturity. A is liable upon his guarantee.

at whose instance or for whose benefit the Receiver was appointed ; 30 C. W. N. 260=A. I. R. 1926 (P. C.) 32=(1926) M. W. N 493, A. I R. 1931 All. 243. This *section does not apply to the special contract of suretyship which is entered into by* a surety to an administration bond. The fact that letters of administration have not been issued does not affect the matter 36 Ind. Cas 1000 Administration bonds under section 78 of the Probate and Administration Act is not a continuing guarantee. 4 U. B. R 22. Where a surety for producing a judgment-debtor arrested in execution of a decree, produces the judgment-debtor in Court he can be absolved from further liability A. I R. 1934 Lah 962.

Revocation of continuing guarantee by surety's death.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

rvant is a standing or continuing
ne contrary does not enure to the
or. 15 C. P. L. R. 136. Surety
lebtor and decree-holder increas-
. A. I. R. 1925 Lah 552=91
t a surety's heirs are also liable
6=61 Ind. Cas 138=43 A. 132.
ee is not revoked by the death of
the guarantor. 32 C. L. J. 223 (P. C.) ; 18 A. L. J. 976.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note

Notes—"Upon the first of these poi
decided the case in favour of the plaintiffs
which the drawer and acceptor of these bills
that as the 132nd section of Contract Act
the plaintiffs are not to be affected by any relation of principal and surety which may exist as between the drawe
that relation for the purpose
by law the acceptor is the
and the drawer only is liable
ascertaining the true meaning of s. 132, but whatever its meaning may be, we are of opinion, that it is not applicable to the present case." *Per Garth C. J* in 3 C. 175 at p. 184. Legal position of a surety is different from that of the executant of the promissory note and hence a person executing a promissory note cannot have the position of a surety. A. I. R. 1929 All 664.

133. Any variance, made without the surety's consent, in the terms of the contract between the principal "debtor,"* and the creditor, discharges the surety as to transactions subsequent to the variance.

Discharge of surety by variance in terms of contract

Illustrations

(*a*) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss

(*b*) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the miscouduct of B is in respect of a duty not affected by the later Act.

(*c*) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such
or consent, C and B agree that B should
by him and not by a fixed salary. A is

to the extent of 3,000 rupees for any
B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payment shall be applied to the then exising debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

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* This word quoted has been inserted by Act 24 of 1917.

(e) C contracts to lend B 5,000 rupees, on the first March. A guarantees repayment C pays the 5,000 rupees to B on the first January. A is discharged from his liability, as the contract has been varied inasmuch as C might sue B for the money before the first of March.

Notes.—Section 133 contemplates contract consisting of series of transaction. 137 Ind. Cas 564=34 Bom. L. R. 167= ... A executes a surety bond at B Co... where another person executes another ... Bom L. R. 709. For cases where there ...ract, *vide* 1 A. L. J. 38 ; 36 C. 326=1 Ind. Cas 715. A surety for a stay of execution is not discharged from liability by the decree-holder and judgment-debtors entering into an agreement without surety's consent increasing the rate of interest and extending the time of payment. A. I R. ... s regards what amounts to variance in contract, ...ety, *vide* A. I. R. 1924 Lah. 211. As regards ... nd. Cas. 353 ; 71 Ind. Cas. 783. The general ... surety waived all rights under the statute could ... iation within this section or as entitling ... surety even though, according to law, ... 57=22 Bom. L. R. 659 The general ... surety waived all rights under the ... nt to the variation within this section. 22 Bom L. R. 659=53 Ind. Cas. 184 ; see also 22 Bom. L R. 711. In order to determine the liability of the surety it is necessary to examine the nature and import of the recitals contained in the surety bond. 134 Ind. Cas 1097. This section contemplates contracts consisting of series of transactions. When the original contract is varied, the surety and not the Court is to judge whether surety will take on him burden of new contract. A. I. R. 1932 Bom. 168 ; see also 112 Ind. Cas. 843.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principle debtor.*

Discharge of surety by release or discharge of principal debtor.

Illustrations.

(a) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him ... debt by the contract with C, and

... 30 on A's land and to deliver it to ... ...ance of this contract. B diverts a stream of water which is necessary for irrigation of A's ... him fr...

(c) ... time, ... B om... ... his suretyship.

... btor, within the period of ... under this section. 2 N L. ... principal and his sureties and subsequently waives his claim against the principal, the sureties are also discharged from their liabilities. 1 L. B. R 150 Section 134 does not apply in case of failure of creditor to sue principal debtor within limitation. 143 Ind. Cas. 526=54 A 1007=1932 A. L. J. 868=A. I R. 1932 All. 610 Abatement of suit as against principal debtor owing to his death during pendency of suit does not discharge surety. 138 Ind. Cas. 305=33 P. L. R. 668=13 Lah. 817=A. I. R. 1932 Lah 419. Surety is discharged where amount is realised from the principal debtor. 151 Ind. Cas. 981=1934 A. L. J. 763=A. I. R. 1934 P. C. 220=40 L. W. 400=A. I. R. 1934 P. C. 210 (P. C.). Section 134 is qualified by section 137. Those sec-

*See ss. 39, 53, 55, 62, 63, 66, 118, 120, *supra*.

tions should therefore be read together and the omission of the creditor to sue the surety till the claim against the principal had become barred, could not have the effect of discharging the surety from his liability as such. 7B. 146 ; U. B. R. (1892-1896) vol. II. 308 ; 11 A. 310=A. W. N. 1889, 94 ; 20 N. L. R. 140 ; 20 M. L J. 633=33M. 308=8 M. L. T. 321=7 Ind Cas. 898 ; 24 A. 504=A. W. N. (1902) 166. A surety is discharged if a consent decree is passed without his knowledge and consent. 30 C. W. N. 540=95 Ind. Cas. 409=A. I. R. 1926 Cal. 812. Where the principal debtor was expressly told by the creditor that he shall not be absolved from liability but that the amount would not be recovered from him but would be reco- ... charged. 96 Ind. Cas. 248=28

... titled to contribution. 15 L. W. ... ents. 38 M. L. J. 131=54 Ind. ... under O. 9 r 5 of C P. Code ... editor allows his remedy against ... nd. Cas. 189 ; but see 116 Ind. Cas 421 ; 103 Ind Cas. 481.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debt discharges the surety, unless the surety assents to such contract.

Notes.—A mere agreement between the creditor and the principal debtor, by which the creditor promises to givo time to the principal debtor, does not discharge the surety under this section, unless the agreement amounts to a contract, *i e.*, unless the agreement is one enforceable by law at the instance of the debtors. 22 A. 351 Where time is given without the surety's consent, the surety is not liable. 13 M 172. This section does not apply to claims wh'ch have been decreed 9 O. C. 28. A principal debtor and his two sureties jointly and severally covenanted with the creditor, the respondent bank, that the principal debtor should repay the principal and interest in defined instalments, and that as between the principal debtor and the sureties, the latter "are to be considered as sureties only for the" principal debtor, "yet as between" these three on the one part and the Bank," on the other, the sureties "are to be considered as principal debtors to the said Bank" so that the said sureties "their heirs, administrators or either of them shall not be discharged or exonerated by any dealings between the said" principal debtor, his heirs, executors or administrators and the said Bank on the other, the sureties "are to be considered as principal debtors to the said Bank," whereby the said sureties only for the said principal debtor would have been so discharged or exonerated *Held*, that the sureties were not liable to the Bank while the principal debtor was meeting the instalment, and that they were not in any way relieved by time given to him without their knowledge or concurrence 5 C W. N. 1=23 A. 137 P. C.=10 M. L. J 279=2 Bom L R. 967. A mere forbearance or delay in suing the principal or pressing him for payment does not discharge the surety. 55 Ind. Cas. 610 =2 Lah. L. J. 316. Mere forbearance on the part of a creditor to sue the principal debtor or to enforce any other remedy against him, does not in the absence of any provision in the guarantee to the contrary, discharge the surety. ... A surety is not exonerated from ... pal debtor in consideration of part ... 864; see also A. I R. 1931 Lab. ... ng time to principal debtor 8 Bur. L ... ety is discharged if any material alteration is ... reditor and the principal debtor without reference ... is under no personal liability but has merely ... 55 B 677. The liability of a surety for judgment-debtor is not discharged by the *bonafide* compromise 55 B 27=Bom. L R 1394. Surety ... is discharged by appearance of judgment- ... debt, and acceptance of such amount by ... Cal. 337=56 C. L. J 586=143 Ind. Cas. 322. ... not discharge surety. A. I. R. 1933 Mad.

756=1933 M. W. N. 1095=65 M. L. J. 458. Giving time does not mean mere forbearance to sue. A. I. R. 1933 Mad. 756=1933 M. W. N. 1095; see also 32 P. L. R. 337=1931 Lah. 627; A. I. R. 1933 Sind 311; but see A. I. R. 1933 Mad. 309=64 M. L. J. 386=56 M. 625; A. I. R. 1933 Mad. 756=65 M. L. J. 458. Agreement to discharge principal debtor with reservation of right against surety does not discharge surety. 37 M. L. W. 170=64 M. L. J. 386=A. I. R. 1933 Mad. 309=56 M. 625. Surety for mesne profits in case of decree is discharged where claim is compromised and time is granted. A. I. R. 1932 Pat. 313=11 Pat. 590=140 Ind. Cas. 564; but see A. I. R. 1933 Mad. 309=64 M. L. J. 386=56 M. 625=37 M. L. W. 170.

Surety not discharged when agreement made with third person to give time to principal debtor.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

Notes.— *Vide* 17 C. W. N. 695=18 Ind. Cas. 876.

Creditor's forbearance to sue does not discharge surety

137. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

Notes.—The term "mere forbearance" in this section read with section 131 ... which is not to discharge the ... diately the debt becomes due, ... 1902, 166. The forbearance ... during the period allowed by ... N. L. R 42; U. B. R. (1892-1896) vol. II, 308; 7 B. 146; 11 A. 310=A. W. N. 1889, 94; 20 M. L. J. 633=33 M. 308=8 M.L.T. 321=7 Ind. Cas. 898. Where claim is time barred as against principal debtor but not as against surety, surety is liable to pay debt and plaintiff is entitled to decree as against him ... Cas. 138. The mere forbe... not discharge the surety. 78 ... the principal debtor does ... extinguished or discharged, ... of surety continues inspite ... the abatement. 54 Ind. Cas. 105.

Release of one co-surety does not discharge others.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

Notes.—Vide s. 44 *supra*. The principle of this section is the same as in s. 44.

Discharge ... creditor's ... impairing ... remedy.

139. ... debtor is thereby impaired, the surety is discharged.

Illustrations

(*a*) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(*b*) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C, to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(*c*) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzels. A is not liable to B on his guarantee.

Notes—When it is found that the creditor has done acts which are inconsistent with the rights of the surety and has also omitted to do certain acts which his duty to the surety requires him to do, and as a result of these acts and omissions the eventual remedy of the surety against the principal debtor is impaired, the surety is discharged from liability under this section, to the extent that he is deprived from recovering from the principal debtor the amount claimed by the creditor. 58 P. L. R. 1912. Giving notice to creditor to realize his debt as principal debtor was doing away with property does not discharge surety. A I. R 1931 Lah 691=33 P L R. 59=13 Lah. 240. As regards effect of withdrawal of attachment on surety of judgment debtor, *vide*, A. I. R. 1934 All 616 As regards cases of omission on the part of creditor, *vide*, A. I. R. 1925 All. 5. The liability of the surety being co-extensive with that of the principal debtor, the fact that the latter may not have sufficient means to pay interest is not an adequate ground for relieving the surety from liability. 4 Lah. L. J. 183=1922 Lah. 89. A surety for several defendants in respect of any decree which may be passed against them is discharged if the plaintiff with the leave of the Court proceeds against one defendant alone exonerating the remaining defendants. 60 Ind. Cas. 144=12 L. W 539 By mere omission to sue the debtor, the surety is not discharged. 1927 Lah. 396

Rights of surety on payment or performance.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the *rights which the creditor had against the principal debtor*

Notes.—The word "invested"
Cas. 575=A. I R. 1925 Bom. 4
equities in favour of creditor 19
part of principal debtor's debt, he
1927 All. 538 Where a surety discharges only a part of the debt, he does not step into the creditor's shoes. 101 Ind. Cas 513=49 A 460. As regards extent of right of transferee of surety's estate to recover from principal debtor debt paid by him to creditor, *vide* A I R. 1932 All 610=1932 A L. J. 868=54 A 1007

Surety's right to benefit of creditor's securities.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not ; and, if the creditor loses or, without the consent of the *surety, parts with such security, the surety is dischaged to the extent of the value* of the security.

Illustrations

(*a*) C advances to B, his tenant, 2,000 rupees on the guarantee of A C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture

(*b*) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(*c*) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Notes.—A mortgagee is not at liberty to appropriate the mortgaged property to the discharge of another debt due to him without the consent of the person, who had stood surety for the mortgaged debt, and if he does so he is bound to credit the surety with the value of the property. 2 C. P. L. R. 193 ; see also 59 C. L. J. 503 ; A. I. R. 1933 Mad. 39.

Guarantee obtained by misrepresentation invalid.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

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crip
it is not necessary, in order to set
representation, to prove that the party who obtained it knew at the time that the representation was made that it was false." *Per Jessel M. R.* in *Redgrave* v. *Herd*, 20 Ch. D. 12 ; see also 33 C. 178.

Guarantee obtained by concealment invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Illustrations.

(*a*) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in conesquence calls upon him to furnish security for his duly
t C

unt
of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market-price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A A is not liable as a surety.

Notes—"This law in India relating to contracts of guarantee is to be found in Chapter VIII of the Indian Contract Act of 1872, and the mistakes, which invalidate such contracts, are specified in sections 142 and 143. These mistakes must be occasioned either (*a*) by means of a representation made by the creditor or with his knowledge and assent concerning a material part of the transaction ; or (*b*) by the creditor keeping silence as to a material circumstance." *Per Geidt J.* in 32 C. 713 at p. 757 ; see also 15 B. 585 ; 6 M 406.

Guarantee on contract that creditor shall not act on it until co-surety joins.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety the guarantee is not valid if that other person does not join.

Implied promise to indemnify surety.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety ; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations

(*a*) B is indebted
A, and on his refusal
grounds for doing so,
He can recover from

(*b*) C lends B a sum of money, and A, at the request of B, accepts a bill of
amount. C, the holder of the bill,
fusal to pay, sues him upon the bill.
defends the suit, and has to pay the
from B the amount of the bill, but not
ground for defending the action.

(*c*) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but

obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Notes.—The expression "whatever sum he has rightfully paid" occurring in this section, includes not only coin, but also property of whatever kind which is parted with in lieu of money, but not the mere incurring of a pecuniary obligation to the creditor in lieu of discharge of the debt owing him. 26 M 322. Even where the suit is dismissed against the principal debtor but decreed against the surety, the latter can recover the decretal amount from the former by virtue of the section. 89 Ind. Cas. 65. The act of the surety in keeping his liability alive by *bona fide* payments of interests within time is not such as could make the payment by him in pursuance of the decree obtained against him by the creditor wrongful within the meaning of the section 49 B. 212=86 Ind. Cas 883 Payment in this section means a payment in money or by transfer of property and not merely the incurring of a pecuniary obligation in shape of a bond, promissory note or acknowledgment of liability. 1924 Lah. 657. Where the surety discharges the decree obtained against both the principal and surety, the surety is entitled to recover the amount from the principal. 58 Ind. Cas. 123. It is essential when a man stands surety for the appearance of another that he should take every precaution to insure the carrying out of his undertaking the surety cannot, when the bond is forfeited, be permitted to claim the money forfeited from the person for whom he stood surety or from any person who induced him to stand. To allow such a suit to be maintained would be opposed to public policy because such a course would tend to render the surety callous and the whole object of demanding the bond would be defeated. 32 P. L. R. 739 ; 127 Ind. Cas. 774. Right of surety under s. 145 is not limited to rights of creditor against principal debtor. 143 Ind. Cas 526=54 A 1007=1932 A L J 868=A I R. 1932 All. 610

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it, which remains unpaid by the principal debtor.

Co-sureties liable to contribute equally.

Illustrations.

(*a*) A, B and C are sureties to D for the sum of 3,000 rupees lent to E E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(*b*) A. B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter and C to the extent of one-half E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

right of contribution that the
contribution is claimed should
ses when the payment made by
he sale of his property exceeds
le and the property of the person
from whom contribution is sought has to that extent benefited by being relieved of liability *Per Banerjee J.* in 26 A. 407=1904 A. W. N 74=1 A. L J. 148 ; see also *Dering* v. *The Earl of Winchelsea*, 2 W & T 535 ; *Davies* v. *Humphreys*, 6 M & W. 153. A suit by one surety against another surety for contribution, where the sureties are bound by the same instrument, is a suit on an implied contract 4 B 321 ; 10 B H C. R 21.

147. Co sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Liability of co-sureties bound in different sums.

Illustrations

(*a*) A, B and C as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000

rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(*b*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000, rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(*c*) A, B and C, as sureties for D, enter into three several bonds each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees C in that of 40,000 rupees conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees A, B and C have to pay each the full penalty of his bond.

Notes.—"*According to the law of England, a claim for contribution is grounded* on principles of natural justice and not on mutual contract express or implied, and ... inferred that the Indian ... provides that in every ... cipal debtor to indemnify the surety ; but the Act has not provided in s. 146 or s. 147 or elsewhere that there is such a promise by one co-surety to the other." 4 B. 321.

CHAPTER IX.

OF BAILMENT

148. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee."

"Bailment", "bailor", and "bailee," defined.

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

Notes.—It is the pawnor, and not an assignee from him that can give directions ...

purpose upon a contract that ... turned or otherwise disposed of ... them. A. I. R. 1934 All. 568=1 ... way receipts as security for the ...

... ract Act. A. I. R. 1934 ... to that effect, cannot ... the purchaser. A. I. R. 1934 Oudh 380=11 O. W. N. 958=151 Ind. Cas. 117.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Delivery to bailee how made.

... tance of goods by the bailee. 117 Ind. Cas. 311=A. I. R. 1929 Pat. 296. A bailment

is the delivery of goods by one person to another, and delivery under s. 149, Contract Act means putting into possession of the intended bailee or his agent of the goods in question. A. I. R 1934 All. 568=148 Ind. Cas. 644

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults

Bailor's duty to disclose faults in goods bailed.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations

(*a*) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B. is thrown and injured. A is responsible to B for damage sustained.

(*b*) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

Care to be taken by bailee.

Notes.—Where articles bailed were actually stolen from the bailee's shop, notwithstanding he had taken care referred to in this section the bailee was held not liable for the loss. 90 P. R. 1900. Where a contract to carry a passenger was made by a foreign company in Calcutta, they were bound by the provisions of this section. 6 C. 227=7 C. L. R. 49 The burden of proving that due care was exercised and the accident was unavoidable is upon the bailee. U. B. R. (1897-1901), vol II. p. 337; U. B. R. (1908) 1st Qr. Contract p. 11. It is doubtful whether this section applies to carriers by rail. 10 C. 210=12 C L. R. 122 Pressure of work or avoidable accident cannot help to avoid liability. 85 Ind. Cas. 786=A. I. R. 1925 Cal. 737. The liability of the Railway Administration for the loss or destruction o [illegible] n to be carried on by railw[illegible] Cas. 440. The liability of a [illegible] his liability is that of a bailee. 20 A. L. J. 728=68 Ind. ([illegible] cible minimum of liability for common [illegible] Cas. 296. In a suit against an ordinary b[illegible] defined, is ss. 85, 151 and 152 of the Contract Act, for not taking care of the goods and saving them for loss, *e. g.*, loss of fire, the bailee should, in accordance with the provisions of s. 106 of the Evidence Act, call all the material witnesses who were on the spot at the time of the loss, but that section of the Evidence Act does not discharge the plaintiff from proving want of due diligence, or (expressing it otherwise) negligence on the part of the bailee or his servants. 20 Bom. L R. 735=27 C. L. J. 615=46 Ind. Cas 319=23 M. L T. 376 (P. C); see also 108 Ind. Cas. 691. The liability of a steamer company in respect of goods delivered for carriage is that of an insurer. If therefore there was sortage in weight, the steamer company would be liable. 41 Ind. Cas. 387. Plaintiff had deposited certain money with the defendant for safe custody. The defendant put his money into a bank in his own name. The bank having failed plaintiff sued to recover the money from the defendant. There was no evidence to show that the defendant had any doubt as to the solvency of the bank at the time he made the deposit. His own money was in the same bank. *Held*, that the defendant's conduct showed that he took exactly the same care of the plaintiff's money as he did of his own. It could not be said that the defendant used or intended to use the money for his own purposes. Therefore the plaintiff was not entitled to recover the amount from the defendant. 36 Ind. Cas. 31. Where plaintiff entrusted defendant with money which the latter placed along with his own money in a box which was unlocked, and on the money being lost the plaintiff sued for recovery; *Held* th the defendant was liable, as he did not take that amount of care as a man of ord'

prudence would have taken of his own
liabilities of a common carrier by se
English law on that subject and that
chapter of "bailments" a common carri
Act. A. I. R. 1931 Sind 124. Railway is not liable if the requirements of s. 151 Contract Act, are fulfilled. 112 Ind. Cas. 197. Where the omission to take precautions is deliberate and such as a man of ordinary prudence would take the company
by express contract
06 Ind. Cas. 470.
company to prove
35 C. W. N. 1242
to unprecedented
158=142 Ind. Cas. 691.
e for compensation for
. 36 Limitation Act. 145
Degree of care varies
A. I. R. 1924 Cal. 92=80
ompany for carriage, the
the company. A. I. R.

cannot contract out of liability. Section 151 of the Contract Act lays down an irreduci-
aw as it
T. 173;
ompany
ections.
25 C.
nent of
title the responsibility of the bank under s. 151 is for the safe custody of the document of title to the goods and not for the safe custody of the goods. A. I. R. 1934 All. 568=148 Ind. Cas. 644. Goods were accepted by the railway company to be carried over; their liability for the good being under the Indian law only. The company executed a bill of lading wherein it agreed that the goods were received "in good condition." On evidence it was found out that the goods were damaged before they were taken into custody by the railway company In a suit for damages: *held* that the clause in the bill of lading "received in good condition" did not affect the railway as their liability did not depend upon the bill of lading or English Common Law and therefore no question of estoppel could arise. A. I. R. 1935 Sind 218.

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Bailee when not liable for loss, &c, of thing bailed.

Notes.—When goods entru of
proving that loss of such goo the
Railway. 91 Ind. Cas. 963, A of
India, contract out of his common his
servants, subject to the proviso that the condition must be expressed in clear, express and unambiguous language. 62 Ind. Cas. 378. The word "loss" is used in the section in the sense of some thing that happens to the goods as distinct from any loss to the owner and it does not mean that a bailee is not liable for non-delivery If he takes the care of a prudent man. 112 Ind. Cas. 736 A bailee
for hire is bound to it the
thing is not fit for the p *arran-*
ty f or the same the 7=A.
I. R. 1921 Bom. 191=6 ticket
containing clause exem could
plead the contract as con-
tract himself out of liability. 7 Rang. 339=A. I. R. 1929 Rang. 145=120 Ind. Cas. 899.

Termination of bailment by bailee's act inconsistent with conditions.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

Notes—Where a pledgee, having power to sell for default, takes over as if upon a sale to himself, the property pledged, without the authority of the pledgor but crediting its value in account with him, this act, though an authorized conversion, does not put an end to the contract of pledge, so as to entitle the pledgor to have the property back without payment 19 C. 323 (P. C).

Liability of bailee making unauthorised use of goods bailed.

154. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations.

of his
and is

(*b*) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

Notes.—Where a bailee uses a car bailed to him for his own purpose, he is liable for damages arising from such use 35 P. L. R. 705

Effect of mixture, with bailor's consent, of his goods with bailee's

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, without bailor's consent, when the goods can be separated

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Illustration

A bails 100 bales of cotton marked with a particular mark to B B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

Effect of mixture without bailor's consent, when the goods cannot be separated.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

Repayment by bailor of necessary expenses.

158. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Restoration of goods lent gratuitously.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Return of goods bailed on expiration of time or accomplishment of purpose

160. It is the duty of the bailee to return or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

to return or deliver accor
mand as soon as the time
which they were bailed has
re is ordinarily bound to
When an article is hired out for use there is an implied warranty that it is fit to be used for that purpose. If there is a breach of warranty there is no liability to pay the hire ; the bailee can leave the article where it is and gives notice to the bailor that there is a breach of warranty ; he is not bound to return it to the bailor 45 B 1017=25 Bom. L. R. 403. The bailee or his representative after this death is bound to return the goods bailed on expiry of the term of the bailment, and would be liable for conversion of the goods from the time when he refuses to return them on a proper demand by the bailor. 34 Ind. Cas 297 ; see also 83 Ind. Cas 151. Under section 160 it is the duty of the railway company to deliver the goods in accordance with the reasonable directions
if his name
not contem-
self about the
and reasonable.
A. I. R. 1922 Nag. 127=65 Ind. Cas 65 A bailee who has given up possession of goods bailed with the consent of the bailor cannot maintain a suit for the recovery of the goods bailed. 19 Cr L. J 220=4 Pat. L W. 62=43 Ind. Cas. 796. Railway cannot limit its liability under s. 160 by risk note. A I. R. 1928 Lah. 774=10 Lah. 360=30 P. L. R. 541=112 Ind. Cas 736.

Bailee's responsibility when goods are not duly returned.

161. If, by the default of the bailee, the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time

Notes—If, by the default of the bailee the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for loss, destruction or deterioration of the goods from the time 28 C. W N 1041 ; see also 35 P. L. R. 705. The responsibility of the commissioners of the Rangoon Port for the goods in their possession is that of a bailee as defined by ss. 151, 152 and 161 of the Contract Act. 132 Ind. Cas. 545=A. I. R. 1931 Rang. 95. The responsibility of a railway administration in India is no less than it would be in England, and as regards delivery, the liability of a railway company is expressly governed by s. 161. 27 N. L. R. 230=A I. R. 1931 Nag. 29. In the absence of a contract to the contrary, a railway is responsible for the delay in delivery under s. 161. 20 A. L. J. 114=A. I. R. 1922 All. 63=65 Ind. Cas. 771. The word "deterioration" in the risk note includes depreciation in value on account of a fall in the price of goods.

The meaning of the word "deterioration" in s. 161 which imposes liability on railway company is the same as in the risk note form B. 1930 A. L. J. 297=A. I. R. 1930 All. 132=121 Ind. Cas. 828 Where pledgee is not producing property which must have been in his possession or is improperly disposed of by him, Court can draw presumption as regards value. A. I R. 1930 Mad 364=122 Ind. Cas 37.

Termination of gratuitous bailment by death.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Notes—The Contract Act is not an exhaustive code with reference to the law of bailments. Bailments are of two kinds voluntary and involuntary. Where a depository dies and the subject of the deposit passes into the hands of his heir, the latter becomes an involuntary bailee 26 C W N 772. On death of bailee his estate is liable for loss caused to bailor in respect of goods bailed and the heir is a constructive trustee. 127 Ind Cas 867=A I R. 1931 Oudh 15. The Act is not exhaustive as to bailments. When the bailee dies his heir who gets the subject of the bailment is also a bailee. 26 C. W. N. 772=69 Ind. Cas. 900

Bailor entitled to increase or profit from goods bailed.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A

Notes.—Where after shares, in a company, were pledged the company issued fresh shares and allotted them to the old shareholder taking the call money from the yearly dividend payable on the old shares, on which they had resolved to pay a fixed interest of 6 per cent. per annum *Held* that the new shares were "increase of profit" within this section and the pledgee must return them to pledgor along with the old shares. 49 B 223=86 Ind. Cas 363 P. C.

Bailor's responsibility to bailee.

164. *The bailor is responsible to the bailee* for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them.

Bailment by several joint owners.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary

Bailee not responsible on redelivery to bailor without title.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery

Notes—Where one L who was both a warehouseman and a cotton merchant used to be financed in the latter business by the defendant bank which did not know that he was a warehouseman (though this fact was known to a man in their employ
mers ;
), and
r cash
n and
suffi-
cotton
n was
pledged by L with the bank, and the cotton after being in the bank's custody for some time was sold by L and passed out to him or to his order no claim having been made by the plaintiff to the cotton in the interval *Held* in a suit by the plaintiff that the fact that the bank parted with the cotton deposited with them to or to the order of the person by whom it was deposited, without notice of any claim

by any other person afforded a complete defence to the suit. 17 C. W. N. 358=24 M. L. J. 176=40 I. A. 1=37 B. 122 P. C.

Right of third person claiming goods bailed.

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of finder of goods; may sue for specific reward offered.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a *specific reward for the return of goods lost*, the finder may sue for such reward, and may retain the goods until he receives it.

When finder of thing commonly on sale may sell it.

169. When a thing *which is commonly the subject of sale is lost*, if the owner cannot, with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

Bailee's particular lien.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(*a*) A delivers a rough diamond to B, a jeweller, to be cut and polished which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(*b*) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months credit for the price. B is not entitled to retain the coat until he is paid.

Notes—If the custody of goods does not involve the exercise of any labour or skill, a bailee will not in the absence of any express agreement be entitled to retain the goods till paid for his custody. 60 P. R. 1885 Section 170 makes provisions for those cases only in which goods have been given to a bailee for a purpose in *connection with which the bailee has to use special skill* A lien is given to the bailee because he has used skill in improving the goods bailed. The case of a seller who keeps the things sold because the price has not been paid can never come within the purview of s. 170 A. I. R. 1934 Oudh 380=11 O. W. N. 958; but see 53 C. 174=29 C. W. N. 1011=26 Cr. L. J. 1505=A. I. R. 1926 Cal. 464=90 Ind. Cas. 289.

General lien of bankers, factors, wharfingers, attorneys and policy-brokers.

171. Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

general balance of accounts. 33
M. two kinds, general or particular.
A. a general balance of accounts.

A particular lien is a right to retain property for a charge on account of labour employed or expenses bestowed upon the identical property detained. Only bankers, factors, wharfinger, attorneys or policy-brokers, can claim a general lien under this section. 13 B. 314. The word factor in India as in England means an agent entrusted with the possession of goods for the purpose of selling them for his principal. 92 Ind. Cas. 724=A. I. R. 1926 Oudh 202=27 Cr L. J. 328. Money in hands of bank can be subject of banker's lien. 95 Ind. Cas. 358 ; but see A. I. R. 1934 Rang. 66=12 Rang. 25=151 Ind. Cas. 1018. A *Nattakkait chetty* in the Madras Presidency is a banker within this section, and is, therefore, entitled to a banker's lien. 43 M. 747=39 M. L. J. 135=59 Ind. Cas. 475 A factor to whom goods had been consigned for sale and who had made advances as against them is not entitled to sell without the consent of the owners. 55 Ind. Cas. 671=11 L. W. 1. Distinction between lien and rights of creditor indicated—one is mere right of retention in the other specific property in the chattel is created. 1927 Lah 408. In the absence of a contract to the contrary, a bailee cannot sell the goods pledged and if he sells, he loses his lien. A. I. R 1930 Sind 36=122 Ind. Cas. 388. The rights of an attorney in India are the same as the rights of a solicitor in England, except in so far as the latter have been diminished or increased by Statute. An attorney in India is entitled to two kinds of lien : to protect his right to recover

a common law

is a particular

general balance

of account between the attorney and his client, but extends only to the costs of recovering or preserving the property in suit Section 171 has not the effect of depriving the attorney of the passive or retaining lien. A I R. 1934 Cal. 341=60 C. 1442=149 Ind Cas. 331=A. L. R. 1934 Cal 242. Solicitor has a lien for his costs on fruits of judgment recovered by his exertion and cannot be defeated by third party's attachment. 131 Ind Cas. 158=33 M. L. W. 430=60 M. L. J. 133=A. I. R. 1931 Mad 183 Where personal debt is barred by limitation, creditor having a lien can exercise his lien notwithstanding. An attorney has a lien for his charges upon documents, movable etc, coming into his hands unless it comes for a specific purpose inconsistent with right of retainer. 48 C 817=25 C W. N. 800=A. I. R. 1921 Cal. 67=66 Ind. Cas 209. A mere order for costs is enough to fasten notice on third party as to the existence of a solicitor's lien. 51 B. 855=29 Bom. L. R. 1196=A. I. R 1927 Bom. 542=105 Ind. Cas. 383 A bank can have a lien over money in its custody or in its hands. But money handed in for a specific purpose and accepted cannot be the subject of such lien. 21 S. L. R. 385=A. I. R. 1926 Sind 225 =95 Ind. Cas. 358.

Bailments of Pledges.

"Pledge" "pawnor" and "pawnee" defined.

172. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge." The bailor is in this case called the "pawnor." The bailee is called "the pawnee"

Notes —The mere taking of goods as security
the lender a pawn-broker. To show that a perso
pawn-broker it must be proved that he carries
on the security of goods pledged to him and that he ... to lend money
on such security and is in the habit of doing so. 4 L. B. R. 8=6 C. R. L J. 118. As regards difference between pledge and floating charge, *vide* 50 B. 547=96 Ind. Cas. 417=A. I. R. 1926 Bom 427. The method provided by this section for hypothecation of loose chattels is not the only method for creating security thereon They may be hypothecated without transferring their possession. In such cases the only question that arises is whether there was an intention to create a security, and if there was ... 22 C.
W. N. 758=44 Ind. ... d under
the law in India ... pawn is
not an equitable ... le loan
and a mortgage w ... 33 Ind.
... *Back*
... (1885)
... there must
... 138 Ind. Cas. 852=36 C.W N

263=59 C. 667=A. I.R. 1932 Cal. 524. Delivery of possession of goods is essential for a pledge. Mere delivery of title deeds is not enough. 22 C. W N. 297=33 Ind. Cas. 891. Where creditor advances money for purchase of goods and stores them in his godowns, goods are security for advances. 32 C. W. N. 1146=A. I. R. 1928 P. C. 214; see also 31 P. L. R. 365=A. I. R. 1930 Lah. 576=125 Ind. Cas. 376.

Pawnee's right of retainer.

173. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but *for the interest of the debt*, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Notes.—A pawn is not an equitable mortgage. It is a security intermediate between a simple loan and a mortgage which only passes the property in thing conveyed. 33 Ind. Cas. 891. It is essential to the contract of pawn that the thing pledged should be actually or constructively delivered to the pawnee. The pawnee acquires a *special property in the thing pledged*. 33 Ind. Cas. 891.

Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

... and the owner may sue in detinue but it is also open to them *to sue in* contract or in tort. 55 Ind. Cas. 45. There is no presumption as to holding goods as security if subsequent advances were separately secured 30 Bom. L R. 1310=A. I R. 1928 Bom. 507 =115 Ind. Cas. 389.

Pawnee's right as to extraordinary expenses incurred.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may *sell the thing pledged*, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Notes—This section requires a notice *only when* the pawnee wishes to exercise his option of selling the pledged goods. If he choses to bring a suit upon the debt no notice is required by this section 48 Ind Cas 970 This section does not con-
actual date and
an intimation
uld be arranged
wnor; all that
ble time within
property be not
the goods sold
40 All 522=
16 A. L. J 390=45 Ind. Cas 462. This section gives a clear right *to the* pawnee to institute a suit independently of the pawn. 33 Ind Cas 891. To effect a pledge of government securities, it is necessary to endorse them, as mere *delivery* without endorsement gives no property in them for purposes of negotiation or sale. 33 Ind.

Cas. 891. A pledgee is not entitled to sell the goods before the amount of the loan becomes due and before effecting a sale he must give reasonable notice to the pledgor. 2 P. W. R. 1917=14 P. L. R. 1917=39 Ind. Cas. 169. Where no period was fixed for the repayment of the loan in order to enforce the right of sale the pawnee should prove (a) a demand for the amount due; (b) a default by the pawnor; (c) a notice of sale giving reasonable time to the pawnor to pay; and (d) an actual sale. 8 Lah. 373=A I. R. 1927 Lah. 408=101 Ind. Cas 725; see also A. I. R. 1927 Nag. 346=104 Ind Cas. 641; A. I R 1928 Mad 1022=114 Ind. Cas. 820. Pledgee has got two concurrent rights, to proceed against debtor or against property. 53 B. 819=31 Bom. L. R. 988=A. I R. 1929 Bom. 471; see also 1929 M. W. N. 167; 31 M. L W. 898=A. I. R 1930 Mad. 364=122 Ind. Cas. 37. Notice under s. 176 is not necessary for debt to be due and recoverable. 146 Ind. Cas. 194=A. I. R 1933 Lah. 536 An intimation to the effect "failing payment by certain date we shall arrange for sale of hypothecated stock" is not notice. 138 Ind Cas. 852=36 C. W N. 263=59 C. 667=A I R. 1932 Cal. 524. In case of sale of jewellery deposited without proper notice, owner of jewellery is entitled to deduct value of jewels on date of suit A I R. 1933 Rang. 76. Right to sue on security of pledge accrues on date of pledge. A. I. R. 1935 Bom. 213

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Defaulting pawnor's right to redeem.

Notes.—Where pledger is unable to deliver property even before suit no tender is necessary 30 M L. W. 898=A. I. R. 1930 Mad. 364=122 Ind. Cas 37

178.* Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same: Provided that the pawnee acts in good faith, and has not at the time of the pledge notice that the pawnor has no authority to pledge.

Pledge by mercantile agent

Explanation.—In this section the expression "mercantile agent" and "documents of title" shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930.

Notes.—To create a pledge under this section, the pledgor must be in the juridical possession of the goods, and mere custody will not suffice 2 Bom. L. R 403=24 B. 458. Pawnee must act with due care and attention in taking pledge 134 Ind. [illegible] . A pledge of the documents [illegible] ods. A I. R. 1934 P. C. 246 [illegible] is contemplated in s. 178 is [illegible] A I. R. 1934 Mad. 132=66 [illegible] is given the jewelleries by [illegible] that they were given to broker [illegible] roker can make a valid pledge [illegible] the time of the pledge notice [illegible] 934 Rang. 198=35 Cr. L. J. 1375=7 R. R. 72.

178A. † When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Pledge by person in possession under voidable contract.

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* Substituted by Act 4 of 1930 † Added by Act 4 of 1930.

Notes.—*Vide* A. I. R 1932 Mad. 428=62 M. L. J. 632.

Pledge where pawnor has only a limited interest.

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Notes—This section refers to certain cases where a pawnor has possession which is necessarily traceable to, and is an incident of a limited interest he had in the goods pledged. 27 M. 424. This section does not limit the scope of s. 178, but saves a pledge to the extent of the pledgor's own interest notwithstanding the presence of invalidating conditions falling under one of the provisions to s. 179=40 Ind. Cas. 148=19 Bom. L. R. 325.

Suits by Bailees or Bailors against Wrong-doers.

Suit by bailor or bailee against wrong-doer.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Notes—Either the bailor or the bailee of a chattel may maintain an action in respect of it against a wrong-doer the latter by virtue of his possession and the former by reason of his property. *Ramanath* v. *Pitambar*, 21 C. W. N 632; see also A. I. R. 1933 Bom 465.

Apportionment of relief or compensation obtained by such suits.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X

AGENCY.

Appointment and Authority of Agents.

"Agent" and "principal" defined.

182. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal."

of goods and who properly employs a sub agent for the purpose is liable to the principal for the sub-agent's fraudulent disposition of the goods within the course of his employment. 19 Bom. L. R. 941. When a person deals with one branch of a

rlties. 133 Ind. Cas. 881=32 P. L. R. 819=A. I. R. 1932 Lah. 34. "Person" in-

cludes joint Hindu family. 150 Ind. Cas. 151 = 1934 A. L. J. 453 = A. I. R. 1934 All. 553.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may emplo an agent.

Who may employ agent

Notes.—A person who appoints a minor his agent can not repudiate the agency on the ground of minority of the agent. A. I R. 1928 Lah. 854.

184. As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Who may be an agent.

Notes.—When a minor, who was a member of a firm consisting of himself and his father applied for shares in a bank and paid an advance with the application whereupon shares were duly alloted to the firm by the bank *Held* that under this section the minor was competent to act on behalf of the firm and that it accordingly became liable on the shares 17 P. L. R. 1918 = 38 P. W. R 1918 = 45 Ind. Cas. 17;

2 All. 374 A

is guardian.

the contract

negligence

185. No consideration is necessary to create an agency.

Consideration not necessary.

Notes —114 Ind. Cas 321.

186. The authority of an agent may be expressed or implied.*

Agent's authority may be expressed or implied.

Notes —By mere direction by C to A to pay money to B, B is not necessarily agent of C. A. I R. 1925 Cal 541. Where an agent, endowed with the widest powers and authorised to buy and sell property, to deal with Government and to pay revenue contracted a loan on behalf of his principal, and the latter did not repudiate the loan when it came to his knowledge, *Held*, that the principal was bound by the act of his agent and was liable for the repayment of the loan 39 Ind Cas 225 = 1 Pat L W 316 Husband is liable for wife's contracts if incurred while managing the household or for articles of necessity supplied to her 116 Ind Cas. 618. Where younger brother authorises sale of property by elder, elder can settle terms of sale in the absence of any limitation in the authority to the effect. 20 M. L W. 523 = A I R 1925 Mad. 227 = 84 Ind. Cas. 612. A consignor of goods is bound by the risk note signed by a person who actually delivered the goods to the railway company. A. I. R. 1924 Pat. 315 = 73 Ind Cas 642. Where a person merely writes letters on behalf of principal, he has no authority to acknowledge debt. 46 A. 892 = 80 Ind. Cas 6. Whether

by the circumstances of each case.

is not expressed, whether agent had

decided according to circumstances of case. A. I. R. 1935 Oudh 170.

187. An authority is said to be express when it is given by words spoken or written An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Definitions of express and implied authority

Illustration

A owns a shop in Serampur, living himself in Calcutta, and visiting the sh occasionally The shop is managed by B, and he is in the habit of ordering g

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* But see the Indian Registration Act (XVI of 1908), and the Code of Procedure (Act V of 1908)

from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Notes —In order to make
it is necessary to prove that th
them or that the conduct of the
there was no agency. 63 P. R. 1899. This section contains provisions authorizing a manager to borrow, if necessary, yet such a general provision is subject to modification in particular cases. 33 C. 343 The mere fact that the principal did not receive any benefit of the transaction does not relieve him of the liability. 4 C. 527 P. C. As regards implied authority, *vide* 110 Ind. Cas. 817; 99 Ind. Cas 748.

188. An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

Extent of agent's authority

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(*a*) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b*) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

Notes.—Where an agent has authority to make contract for the purchase of produce on behalf of plaintiff, he has authority
and his signature will make the firm liable
in such contract. 4 Ind. Cas 115 Under
authority to pledge the credit of his principal for what is necessary to the successful management of the business 1 C. L. J 149; 3 O W N. 224; 98 Ind. Cas. 783. Even after the death of his principal the agent of a business has authority to enter into transactions which are necessary
vation of the interest of the heirs of the
it is revoked by the heirs 60 Ind. Ca
that an agent has no authority to bo
render the latter responsible to the lender, unless he has been expressly authorised or it can be proved that the principal has previously sanctioned such a course of dealing on the part of the agent or has subsequently adopted and ratified the loan. 36 Ind. Cas. 968 An agent to process purchaser has no authority to enter into a
rized act,
g. 27=27
requests
4 A. L. J.
236=33 Ind. Cas. 723. An agent can be an insurer of goods in his custody provided there is consideration for that agreement. 1930 Cr. C. 1168=A. I. R. 1930 Rang. 332=128 Ind Cas. 592. Where agent is authorized to receive money for principal, he may be presumed to be also authorized to do every lawful and necessary thing connected therewith. 3 O. L. J. 623=37 Ind Cas. 442; but see 41 M. 823=35 M L J. 581=48 Ind. Cas. 756. Where agent borrows without authority, principal is liable to the extent of the benefit. (1915) M W. N. 761=32 Ind. Cas. 763. If the power of attorney do not authorise the agent to carry on a business except with limitations, and any act done by him in exceces of such power will not find the principal. 6 L. W. 417=41 Ind. Cas. 224; see also 7 Bur. L. T. 126=23 Ind. Cas. 516; 2 Pat. L. W. 133=2 P. L. J. 600=A. I. R. 1917 Pat. 273=41 Ind Cas. 175 A power to purchase, sell or mortgage does not imply power to borrow. 10 S L. R. 72=36 Ind. Cas. 968. As regards cases where contract by servant with third party is binding on his master, *vide*, A. I. R. 1931 Sind 144=25 S. L. R. 253=134 Ind. Cas. 385.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.*

Agent's authority in an emergency.

Illustrations.

(a)

(b) A ... d them immediately t... y will not bear the journey to Cuttuck without spoiling.

Notes—Power of attorney—Construction of—Authority of manager. 10 Ind. Cas. 895; 13 Ind. Cas. 705=39 C. 568. *Where an agent borrows for business of principal* ... is bound to pay the debt. 1927 ... oney in time, nor instructs the ... price. 1927 Lah. 493.

Sub-Agents.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

When agent cannot delegate

Notes.—Agent for sale—Appointment of sub-agent—Contract—Right to implement—Lien of agent—Retainer. 1923 Rang 84; see also 39 M. 365; 42 Ch. D. 424; 1911 A C. 105; 1912 A C 673.

191. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

"Sub-agent" defined.

Notes—Authority to appoint sub-agent may be presumed from facts and the nature of the agency. 77 Ind Cas. 920.

192. Where a sub agent is properly appointed, the principal is so far as regards third persons, represented by the sub agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal

Representation of principal by sub-agent properly appointed.

The agent is responsible to the principal for the acts of the sub-agent.

Agent's responsibility for sub-agent.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Sub-agent's responsibility

Notes—Where the defendants are sub-agents of A & Co, who are the agents of the plaintiffs, under this section there is no privity of contract between the defendants and the plaintiffs 27 M L. J. 501; 26 Ind Cas 822 The liability of an agent to the principal extends to sub-agent's fraud. 43 Ind Cas 699=19 Bom L. R. 948; 127 Ind. Cas 529; 126 Ind. Cas. 473

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons, the principal is not represented by or responsible for the acts of the persons so employed, nor is that person responsible to the principal

Agent's responsibility for sub agent appointed without authority.

Notes.—Where an agent is employed to conduct business and the custom of the trade empowers him in the conduct of such business to employ a sub-agent or where

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*But see s. 214 *infra*

the nature of the business is such that he must employ a sub-agent, he has authority to do so. 43 Ind. Cas. 699=19 Bom. L. R. 948.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Relation between principal and person duly appointed by agent to act in business of agency

Illustrations.

(*a*) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(*b*) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co., for the recovery of the money. D is not a sub-agent, but is solicitor for A.

Notes.—63 P. R 1874 ; 43 Ind Cas. 699 (703)=19 Bom. L. R. 948 ; 1927 Lah. 562 ; 120 Ind Cas. 284 ; 121 Ind. Cas. 636.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case ; and if he does this he is not responsible to the principal for the acts or negligence of the agent so selected.

Agent's duty on naming such person.

Illustrations.

(*a*) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently, and the ship turns out to be unseaworthy and is lost ; B is not, but the surveyor, is responsible to A.

(*b*) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority.

Effect of ratification.

Notes.—The rule, which is recognised in this section is that ratification in the [illegible] f agency, is applicable [illegible] 230=12 C. W. N. 393 [illegible] acts on behalf of the [illegible] L. J. 497 ; see also 16 Ind Cas. 950 ; 68 Ind. Cas 787 ; 28 Ind. Cas. 145 ; 35 I A. 48 ; 48 Ind. Cas. 759 ; 3 A. 832. For a valid ratification, knowledge of the principal of the essential facts of the transaction is necessary 19 C. W. N. 56 A thing void *ab initio* cannot be ratified. 1927 Nag. 214 ; 34 C. W. N. 642 ; 34 C W. N. 135 ; 32 C. W. N. 439 ; 101 Ind. Cas. 89. An agent to collect rent cannot ratify the lease unless he is authorised to ratify the contracts. 1927 Cal. 796 Effective ratification necessarily involves knowledge of all the material facts on the part of one who ratifies A. I. R. 1930 P. C. 278. Ratification implies promise to other contracting party adopting contract entered into on his behalf. 134 Ind. Cas. 274=27 N L R. 312=14 N. L. J. 109=A. I. R. 1931 Nag. 161. Ratification should be of the whole act. 4 P. L. T. 443=A. I. R. 1924 Pat. 2 [illegible] that th [illegible] 1016. [illegible] valid o [illegible] tors bu [illegible]

company having full knowledge of facts. 9 Lah. 360=A. I. R. 1928 Lah. 176=108 Ind. Cas. 49 ; see also 23 C. L. J 26=20 C W. N. 370=43 C. 790=45 Ind. Cas. 305. No amount of ratification can raise an act what is void *abinitio* to the level of a valid one. A. I R. 1924 Nag. 338=79 Ind. Cas. 48 ; see A. I. R 1928 All 172. An official receiver is not an agent of Court and an unauthorized sale by him cannot be ratified. 50 Mad. 135=51 M. L. J. 529=A. I. R. 1922 Mad. 1=99 Ind. Cas. 8. A *mortgage executed by a general agent* holding a power of attorney, which did *not* authorize him to execute mortgages is operative if acted upon and ratified by the principal. A. I. R. 1922 All. 197=19 A L. J. 827=44 A. 77=64. Ind. Cas. 768.

Ratification may be expressed or implied.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

[illegible] ierwards B sells them to C on his [illegible] the purchase made for him by A.

[illegible] to C Afterwards B accepts inte- [illegible] ratification of the loan.

Notes [illegible] :ation may be express or implied from the conduct of the person on whose behalf the act is done. The acts relied *upon as proving ratification, however,* must be *clearly inconsistent with a denial of* liability. 48 Ind. Cas. 959. There is no inference of ratification where the unauthorised act is not repudiated. 52 Ind. Cas. 414 ; but see 31 Ind. Cas 216=21 M. L. J 551. Communication to the other party completes the ratification. 38 M. 997. Where a principal on *being apprised of the agent having done an act exceeding* his authority keeps quiet without repudiating such act, the principal will be deemed to have impliedly ratified the act A I R. 1930 Mad. 476=122 Ind. Cas 501 ; 9 L. W. 251=49 Ind. Cas 758. Mere *ex post facto* submission to what has taken place, is no ratification of it. 7 O. L J. 429=58 Ind. Cas. 165 After ratification personal liability of agent ceases. 1927 M. W. N. 118=A. I. R 1927 Mad 478.

Knowledge requisite for valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Notes —For a valid ratification, it must be proved that the principal had knowledge of all the essential facts of the transaction. 19 C. W. N 56=25 Ind. Cas. 56 ; A. I R. 1930 P. C. 278 ; 127 Ind. Cas 868. A ratification implies an intention to ratify. 1927 Mad. 478. A ratification is different from consent. 100 Ind Cas 855

Effect of ratifying unauthorized act forming part of a transaction.

199. *A person ratifying any un authorized* act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Notes —A principal cannot ratify a transaction in part and repudiate it in part. 19 C. W. N. 56=25 Ind. Cas. 274.

Ratification of unauthorized act cannot injure third person.

200. *An act done by one person on behalf of another,* without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(*a*) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand *can not be ratified by B, so as to make C liable for damages for his refusal to* deliver.

(*b*) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, *so as to be binding on A.*

.'h is that it was
the person who
one of two joint
receivers on behalf of both without the authority of the other is not valid and can not be rendered so by the subsequent ratification by the other. 23 C. L. J. 453=34 Ind. Cas. 221.

Revocation of Authority.

201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency.

Notes.—Where the special bu

W. R. 1915. Under this section an agency is terminated among other ways by the principal revoking his authority or by the agent renouncing the business of the agency, or by the business of the agency being completed. 28 M L. J. 140=26 Ind. Cas 740. Where there is revocation of
s of agency by the agent there is no
372. An agency will not terminate on
agent is allowed to continue as agent.
continued 31 M. L J. 685=36 Ind.
is one of fact. 31 M. L. J. 687=4 L.
312. On the death of one of two joint
surviving agent. 20 C W. N. 708=
of a joint Hindu family does not ter-
Cas 151=1934 A L. J 453=A. I R
1934 All 553=A. L. R. 1934 All. 517; 21 C W. N. 620=41 Ind. Cas. 288 Agent continuing in possession of the principal's house after his dismissal can not be said to be in permissive possession. 20 N. L R. 148=29 Cr. L. J 902=A. I. R 1928 Nag. 284=111 Ind. Cas 662 On the termination of the agency of a broker the under-broker's employment also is dissolved even though the under-broker had been employed by the broker for a fixed time. The under-broker can not sue the broker for wrongful termination unless the main agency has been terminated by the broker purposely. 47 C 290=46 I. A. 314=24 C. W. N. 577=58 Ind Cas. 851. Agency terminates on the death of the principal and suit for accounts must be filed within 3 years of the death under Art. 89 Limitation Act. It does not fall under s. 209 or under Art. 120 Limitation Act. 26 C W. N. 320=A. I. R. 1922 Cal. 53=65 Ind. Cas. 219.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Termination of agency where agent has an interest in subject-matter.

Illustrations

(*a*) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A A cannot revoke this authority, nor can it be terminated by his insanity or death

(*b*) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

Notes.—An agency for sale of goods does not terminate on receipt of the price by the agent, inasmuch as, under s. 218, there is a subsequent obligation on the part of the agent to account for the sums and to pay them to the principal nor does it terminate when the principal obtains knowledge of the agent's breach of duty. 12 A. 541. As to when a revocation can be made under this

mortgagor puts the towards interest, such loan to the mortgagor ... v Lon v. *Hlo Gywe*, 9 L. B. R. 172=47 Ind. Cas. 133. An agent selling cloth and entitled to retain part of price as remuneration, has no interest in cloth unsold within the meaning of this section. A. I. R. 1932 Nag. 34 Cancellation of power of attorney not complying with terms mentioned therein is illegal. A. I. R. 1932 Mad. 70.

When principal may revoke agent's authority.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Notes.—Where authority is conferred on an agent by two or more principals jointly, the authority may be revoked by one, and it is sufficient if the notice of revocation is given by one of the principals. 18 C L J. 621 · *Bristow* v *Taylor*, 2 Stark 50 ; see also 24 B 403 ; 17 B. 542.

Revocation where authority has been partly exercised.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(*a*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(*b*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

thir ... tak ... tak ... revocation is so made known it is inoperative. 22 Ind. Cas. 91=18 C. L. J. 621.

Compensation for revocation by principal or renunciation by agent

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Notes—Under this section, in the absence of any express contract the period of time to be implied depends on the particular circumstances of the cases. ... the contract of agency is terminated ... own name deliverable at a future dat ... rice of the goods on the ... indemnity is an implied term ... duct amounts to a refusal to ... ncy under ss. 39 and 205 of the ... r in a commission agency the ... depending on the custom of trade and the general circumstances of the business. 15 S. L. R. 140=A. I. R. 1922 Sind 25.

Notice of revocation or renunciation.

206. Reasonable notice must be given of such revocation or renunciation ; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Notes—A revocation is made by the principal and renunciation can be effected by an agent. Where an agent sets up an adverse title when he abandons his em-

ployment there is an implied renunciation on his part. 30 C. 609. What this section means is that when there is not express or implied contract that an agency should continue for any fixed period, reasonable notice must be given of the revocation or renunciation of the agency, etc. 35 C. W. N. 36.

Revocation and renunciation may be expressed or implied.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

Notes.—*vide* notes under section 206.

When termination of agent's authority takes effect as to agent, and as to third persons.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(*a*) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(*b*) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras B after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(*c*) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his Will. B, after A's death but before hearing of it, pays the money to C. The payment is good as against D, the executor.

Notes—Where a person appoints an
and revokes the authority before registrat
circumstances is valid, if the revocation is
document or to the registering officer 30
provides that the termination of the authority
the agent, take effect before it becomes
persons, before it becomes known to them
Legislature, the revocation of the authority
time different from the moment when it takes
Ind. Cas. 90=18 C. L. J. 621. If the authority of agent to admit execution of a document is revoked before registration, but such revocation is not known either to the grantee of the document or to the registering
ated although it is registered by the agent
A. I. R. 1934 Rang. 104=7 R. R. 42=151 Ind C
wife admits that her husband acted as her a
actions it is not open to assert, in absence of evidence to the contrary, that he did not act as her agent in subsequent transactions unless his authority was revoked expressly to the knowledge of the other parties to the transaction. A. I. R. 1934 Rang. 341.

Agent's duty on termination of agency by principal's death or insanity.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Notes.—Even after the death of the principal the agent of a business man has authority to enter into transactions which are necessary or reasonable for the protection and preservation of the interest of the heirs of the deceased, and such

authority continues, till it is revoked by the
Cas. 736 Under section 201 agency terminate
Suit against legal representatives of agent
of death under Art. 89. Such case does not fall under Section 209 or under Art. 120 Limitation Act. 26 C. W. N. 320=A. I. R. 1922 Cal. 53=65 Ind. Cas. 219.

Termination of sub-agent's authority.

210. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's Duty to Principal.

Agent's duty in conducting principal's business.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(*a*) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(*b*) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high C, before payment, becomes insolvent B must make good the loss to A.

Notes.—An agent is bound to carry out the instructions of his principal 86 Ind. Cas. 567=7 Lah. L. J. 84. Where an agent has caused loss to the principal by not carrying out his directions and by supplying goods contrary to his directions the agent or his legal representatives are liable for the value of the goods so supplied. 66 Ind. Cas. 446; see also A. I R. 1931 Lah 302. An agent must never place himself in a position when it is possible that his duty to his principal and his own interest would stand in opposition to each other 10 S L. R 86 If an agent appoints a sub-agent he is bound to exercise the same amount of discretion as an ordinary prudent man would exercise. 129 Ind Cas. 287. Where an agent, while acting as agent deals as principal, onus of justifying his position is on agent. A I. R 1935 Sind 38.

Skill and diligence required from agent.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

Illustrations.

(*a*) A, a merchant in Calcutta, has an agent, B, in London to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, *e g*, by variation of rate of exchange—but not further.

(*b*) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(*c*) A, an insurance-broker, employed by B to effect an insurance on a ship, omits

to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B

(*d*) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival, the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Notes—In India the work of the person engaged to supervise a building is not to be measured by the standard applied to architects and engineers in England. 43 C. L. J 479=97 Ind Cas. 200 Measure of reasonableness between commission agent and principal is not that laid down in s. 91. A. I. R. 1925 Mad. 46=47 M. L. J. 312. Where agent is collecting as much as possible from merchant and giving credit for balance, he is not liable for subsequent insolvency of merchant A. I. R. 1933 Lah. 841.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

Notes.—This section lays down that the agent is bound to render accounts to his principal, but it is nowhere laid down in the Act that it is the duty of the principal to render accounts to the agent. 60 P. R. 1899. There is no statutory duty cast upon agent to keep accounts A. I. R. 1925 Lah. 100. An agent will not discharge himself from the duty of accounting by merely delivering to his employer a set of written accounts without attending to explain them, and without producing vouchers by which the items of disbursements are supported. 52 C 766=90 Ind. Cas. 944 ; 6 C.
. W. N. 110. Under
accounts to his princi-
kept accounts does not
entitle the agent to ask for accounts. 78 Ind. Cas 959 ; 120 Ind. Cas. 10.
special circumstances A I. R.
more principals than one, servant
3=A I R 1933 Lah. 93. From the mere fact that the principal has written the word "seen" on the account of the agent, it cannot be implied that the agent has rendered the account and the principal has been satisfied with it 150 Ind Cas. 151=A. I. R. 1934 All. 553=1934 A. L. J 453.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Agent's duty to communicate with principal.

best rate cannot defer
day to his principal.

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Right of principal when agent deals, on his own account, in business of agency without principal's consent

Illustrations.

tate for himself in the name of
te for himself, may repudiate the
any material fact, or that the

(*b*) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself but conceals the discovery of the mine. A allows B to buy in

ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Notes.—Where an agent, appointed to sell his principal's goods for a fixed price, buys them on his own account without the previous consent of the latter, it is competent for the principal either to repudiate the transaction, under the circumstances
... 32=3 Ind. Cas.
... principal the
... 4=1922 Mad.
... e or sale by agent of his own goods for or to
... is not *ipso facto* void. 1927 Sind 195. Trans-
... conflict with interest of principal is presumed to
... I. R. 1935 Sind 38.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustrations.

A directs B, his agent, to buy a certain house for him. B tells A, it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Notes.—This section is merely enabling and confers upon the principal the right
... saction to which the agency business
... wledge of the principal, has dealt with
... account of the former, the principal
is free to exercise that right or not. 34 B. 292=3 Ind Cas. 801=1 Bom. L R 779; see also 16 M. 238; 36 Bom. L. R 68=A. I. R 1934 Bom. 86. No broker, unless specially authorized is entitled to get commission from both sides. A. I. R. 1933 Rang 184.

Agent's right of retainer out of sums received on principal's account.

217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent

Notes—This section does not authorize an agent to retain sums received on account of his principal in the business of agency, for his remuneration alleged to be due to him for acting in another agency which had long expired. The word "business" in this section means continuing business or the same business as that for which the agent had been agent before. 49 P R. 1885. In case of insolvency of the principal, the agent can retain the money which he has deposited with the principal. 15 L. W. 201 (P. C.). The agent is entitled to a lien or retainer upon money of his principal which are in his hands, for all expenses properly incurred. 77 Ind. Cas. 920.

Agent's duty to pay sums received for principal.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Notes—Under this section, the agent is no doubt bound to pay the principal the sums received on his account, but it cannot be said that, until he does so, the agency is not determined because the business of agency is not completed. 28 M. L. J. 140=26 Ind. Cas. 740. The principal can sue for accounts the sub-agent appointed by him for collecting rents though the sub-agent was to pay over the collections to the agent. 104 Ind. Cas. 704.

When agent's remuneration becomes due.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold,

to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(*d*) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, *to send him 100 bales of cotton by a certain ship. B, having it in his* power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival, the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Notes—*In India the work of the persoı* [illegible] to be measured by the standard applied [illegible] 43 C L. J. 479=97 Ind Cas. 200. Measure [illegible] agent and principal is not that laid down in s [illegible] J. 312. Where agent is collecting as much as [illegible] for balance, he is not liable for subsequent insolvency of merchant. A. I. R. 1933 Lah. 841.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

Notes—This section lays down that the agent is bound to render accounts to his principal, but it is nowhere laid down in the Act that it is the duty of the principal to render accounts to the agent. 60 P. R 1899. There is no statutory duty cast upon agent to keep accounts. A. I R 1925 Lah. 100 An agent will not discharge himself [illegible] ployer a set of written [illegible] producing vouchers by [illegible] =90 Ind. Cas 944 ; 6 C. [illegible] W. N. 110. Under [illegible] accounts to his princi- [illegible] cept accounts does not entitle the agent to ask for accounts 78 Ind. Cas. 959; 120 Ind. Cas. 10[illegible]. Agent is entitled to call for accounts from principal in special circumstances A. I. R. 1933 Lah. 483=141 Ind Cas. 505 Where there are more principals than one, servant is liable to account to them jointly. 145 Ind. Cas. 178=A. I. R 1933 Lah. 93. From the mere fact that the principal has written the word "seen" on the account of the agent, it cannot be implied that the agent has rendered the account and the principal has been satisfied with it 150 Ind. Cas. 151=A. I. R. 1934 All. 553=1934 A. L. J. 453

Agent's duty to communicate with principal.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Notes —An agent specially authorised to buy or sell at the best rate cannot defer carrying out an order until he has communicated the rate of the day to his principal. 50 Ind. Cas. 146

Right of principal when agent deals, on his own account, in business of agency without principal's consent

215. If an agent deals on his own account in the business of the agency, *without first obtaining the consent of his principal* and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any *material fact has been dishonestly concealed* from him by the agent, *or that the* dealings of the agent have been disadvantageous to him.

Illustrations.

(*a*) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, *on discovering that B has bought the estate for himself, may repudiate* the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(*b*) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself but conceals the discovery of the mine. A allows B to buy in

ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

497 ; 119 Ind. Cas. 837. Purchase or sale by agent of his own goods for or to principal without disclosing the fact is not *ipso facto* void. 1927 Sind 195. Transaction which puts agent's duty in conflict with interest of principal is presumed to be disadvantageous to principal. A. I. R. 1935 Sind 38

Principal's right to benefit gained by agent dealing on his own account in business of agency.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustrations.

A directs B, his agent, to buy a certain house for him. B tells A, it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Notes.—This section is merely enabling and confers upon the principal the right to claim for his agent the benefit of the transaction to which the agency business relates. Where the agent, without the knowledge of the principal, has dealt with the business on his own account, instead of on account of the former, the principal is free to exercise that right or not. 34 B 292=3 Ind Cas 801=1 Bom. L. R. 779 ; see also 16 M. 238 ; 36 Bom. L R 68=A I R 1934 Bom. 86. No broker, unless specially authorized is entitled to get commission from both sides. A. I. R. 1933 Rang. 184.

Agent's right of retainer out of sums received on principal's account.

217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Notes—This section does not authorize an agent to retain sums received on account of his principal in the business of agency, for his remuneration alleged to be due to him for acting in another agency which had long expired. The word
same business as that
In case of insolvency of
eposited with the princi-
retainer upon money of
perly incurred. 77 Ind. Cas. 920.

Agent's duty to pay sums received for principal.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Notes—Under this section, the agent is no doubt bound to pay the principal the sums received on his account, but it cannot be said that, until he does so, the agency is not determined because the business of agency is not completed 28 M. L. J. 140=26 Ind Cas 740. The principal can sue for accounts the sub-agent appointed by him for collecting rents though the sub-agent was to pay over the collections to the agent. 104 Ind Cas. 704.

When agent's remuneration becomes due.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act ; but an may detain moneys received by him on ac goods sold,

although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

Notes.—Where an agent is employed for an agreed commission to sell certain ... in finding a purchaser at the ... agent is entitled to reasonable ... 981=15 C. L. J. 315; *Prickett* v. ... R. 132. If the person propo- ... r and if nothing remains for him to do, he is entitled to his commission. *Green* v. *Lucas*, 31 L. T. 731; *Prickett* v. *Badger*, 7 C. B. (N. S) 296; *Fis* ... 193; 124 Ind. Cas. 35; but see ... 11 Ind. Cas 820=15 C. L. J. 40. ... commission. A. I. R. 1933 Lah. 7-4. ... tion of contract. He need not look to the fulfilment of conditions for earning commission. A. I. R. 1935 Pesh. 56.

Agent not entitled to remuneration for business misconducted.

220. An agent, who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Illustrations.

(*a*) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, ... bad, ... 1,00, ... nera ... to B.

(*b*) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Notes.—A broker employed to sell will be entitled to his commission only when the vendor realises the price. 79 Ind. Cas. 750.

Agent's lien on principal's property.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

Note ... ment between a company and its agent ... in so far as the expenditure incurred ... tion, the agent is entitled to a lien, and s. 149 of the Companies Act does not authorise the Court to deprive ...

... purposes. ... 1935 ...

Principal's Duty to Agent.

Agent to be indemnified against consequences of lawful acts.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations.

(*a*) B, at Singapur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B

for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(*b*) B, a broker at Calcutta, by the orders of A a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccesfully, and has to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

Notes.—A suit by a commission agent against his principal is governed by Art 83 of the Limitation Act. 59 P. L. R. 1918=46 Ind. Cas. 541. A broker is an agent to find a contracting party and as long as he adheres strictly to his position as broker, his contract is one of employment between him and the person who employs him and not a contract of sale or purchase with the party whom he in the course of such employment finds. 19 C W. N 623=42 C 1050. Principal must *indemnify agent for lawful authorized acts 140 Ind. Cas. 624=34 Bom. L. R 1268=* A. I. R. 1932 Bom. 593; see also A. I. R. 1932 Lah. 356=33 P. L. R 450=13 Lah. 766=138 Ind Cas. 241. Before agent can claim indemnity against principal, he must prove actual loss. A. I. R. 1935. Sind 38.

Agent to be indemnified against consequences of acts done in good faith.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Illustrations.

(*a*) A, a decree-holder and entitled to execution of B's goods requires the officer of the Court to seize certain goods, representing them to be the goods of B The officer seizes the goods, and is sued by C, the true owner of the goods A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

([illegible] ossession of A, but which A had no [illegible] ands over the proceeds of the sale [illegible] sues B, and recovers the value of the [illegible] or what he has been compelled to pay to C and for B's expenses.

Notes.—Where money is authorizedly sent for unlawful purposes an agent can [illegible] principal against agents for accounts. A I. [illegible] ed to be indemnified against unlawful acts [illegible] has acted in good faith and without know- [illegible] Ind Cas 980. An agent cannot settle the principal's transactions when he has not been asked to make any such settlement, nor can the agent charge against principal, monies paid by him in that respect. 112 Ind Cas. 29. Where agent settles against claim for smaller amount than due on contract, he cannot recover from principal more than amount settled. 112 Ind. Cas. 52=26 S. L R. 85=A. I. R. 1933 Sind 34.

Non-liability of employer of agent to do a criminal act.

224. Where one person employs another to do an act which [illegible], the employer is not liable to the [illegible], either upon an express or an implied [illegible] mnify him against the consequences [illegible]

Illustrations.

[illegible] indemnify him a[illegible] s to pay damages [illegible] A

[illegible] ublishes, at A [illegible] gainst the con[illegible] in respect [illegible] has to pay damages, and also incurs expenses. A is [illegible] indemnity.

crime committed by
presumption that the
. 88 Ind. Cas. 980.

Compensation to agent for injury caused by principal's neglect.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Notes.—*Vide* Acts XIII of 1855 and VIII of 1923.

Effect of agency on contract with third persons.

Enforcement and consequences of agent's contracts.

226. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(*a*) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot in a suit by the principal set off against that claim a debt due to himself from B.

(*b*) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Notes.—Under the English Law, where an exclusive credit is given to the agent the principal cannot be treated as in any way a party to the contract, although he may have authorised it or may be entitled to the benefit of it. (1891) 1 Q. B. D. 370 (372); 19 Q. B. D. 110; 22 Q. B. D. 722. Under the Indian Contract Act, the
s on s. 226. A
under this sec-
there being no
provison against contracting out. It would be

agent in his
can sue upon
it. 130 Ind. Cas. 548. A disclosed principal is liable for the debt of agent. A. I. R. 1934 Pat. 435=149 Ind. Cas. 898.

Principal how far bound when agent exceeds authority.

227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Notes—If an agent exceeds his authority, then if the part of what he does which is within his authority can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal. Where the excess of the agent's authority cannot be so separated then the principal is not bound by the transaction. 2 C. P. L. R. 103.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Principal not bound when excess of agent's authority is not separable.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees A may repudiate the whole transaction.

Cases —43 All. 623 ; 36 Ind. Cas. 968.

229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Consequences of notice given to agent.

Illustrations.

(*a*) A is employed by B to buy from C certain goods, of which C is apparent owner, and buys them accordingly In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(*b*) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Notes.—A notice given to or information obtained by a Mukthar in the course of his business transacted by him for his client shall as between the client and third parties have the same legal consequence as if it had been given to or obtained by the client himself. This is the principal laid down in this section. 4 Bom L. R. 832. Any knowledge on the part of a person employed as agent prior to his employment as such would not amount to information of the fact obtained by the agent in the course of the business transacted by him as agent. 89 Ind Cas. 625. Knowledge of agent is not to be imputed to principal if disclosure of facts was not to the interest of the agent. 26 M. L. T. 370 P. C ; 119 Ind. Cas 23. A notice to agent is a notice to the principal. 97 Ind. Cas. 577 ; 125 Ind. Cas. 365 ; 119 Ind. Cas. 754.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Agent cannot personally enforce, nor be bound by contracts on behalf of principal.

Such a contract shall be presumed to exist in the following cases :—

Presumption of contract to contrary.

(1) Where the contract is made by an agent for the sale or purchase of

[illegible] name of his principal :

[illegible] cannot be sued.

Notes —Where an agent enters into a contract as such, if he has interest in the contract, he may sue in his own name. 24 M. 134 An auctioneer is entitled [illegible] ainst a purchaser at auction. [illegible] 5 C 71 The managing [illegible] L. J 3=27 A. 361. Where [illegible]

against principal A I. R 1932 Nag 27=27 N [illegible]
principal is unregistered corporation, servants [illegible]
liable. A. I. R. 1933 Lah. 93=145 Ind. Cas. 17. [illegible]
liable for agent's acts A. I. R. 1934 Pat. 269=150 Ind. Cas. 671 ; see also A. I [illegible]
1934 Pat. 435.

n applies to a crime committed by ·re where the presumption that the ... or is rebutted. 88 Ind. Cas. 980.

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Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

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Illustrations.

(*a*) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot in a suit by the principal set off against that claim a debt due to himself from B.

(*b*) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C. is discharged of his obligation to pay the sum in question to B.

Notes.—Under the English Law, where an exclusive credit is given to the agent the principal cannot be treated as in any way a party to the contract, although he may have authorised it or may be entitled to the benefit of it. (1891) 1 Q. B. D. 370 (372); 10 Q. B. D. ... '22. Under the Indian Contract Act, the ... into by his agent rests on s. 226. A ... ht to sue on the contract under this sec- ... would be ...

... a contract with an agent in his ... it. 130 Ind. Cas. 548. A disclosed ... principal or the agent can sue upon ... principal is liable for the debt of agent. A. I. R. 1934 Pat. 435=149 Ind. Cas. 898.

Principal how far bound when agent exceeds authority.

227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration.

... rgo, authorizes B to procure an insurance for ... a policy for 4000 rupees on the ship, and ... A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Notes.—If an agent exceeds his authority, then if the part of what he does which is within his authority can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal. Where the excess of the agent's authority cannot be so separated then the principal is not bound by the transaction. 2 C. P. L. R. 103.

Principal not bound when excess of agent's authority is not separable.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees A may repudiate the whole transaction.

Cases—43 All. 623 ; 36 Ind. Cas. 968.

Consequences of notice given to agent.

229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(*a*) A is employed by B to buy from C certain goods, of which C is apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(*b*) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

[illegible] by a Mukthar in the course [illegible] s between the client and third [illegible] een given to or obtained by [illegible] this section. 4 Bom. L. R. 832. Any knowledge on the part of a person employed as agent prior to his employment as such would not amount to information of the fact obtained by the agent in the course of the business transacted by him as agent. 89 Ind. Cas. 625. Knowledge of agent is not to be imputed to principal if disclosure of facts was not to the interest of the agent. 26 M. L. T. 370 P. C. ; 119 Ind. Cas. 23 A notice to agent is a notice to the principal 97 Ind. Cas. 577 ; 125 Ind. Cas. 365 ; 119 Ind. Cas 754.

Agent cannot personally enforce, nor be bound by contracts on behalf of principal.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases :—

(1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad ;

(2) Where the agent does not disclose the name of his principal :

(3) Where the principal, though disclosed, cannot be sued.

Notes—Where an agent enters into a contract as such, if he has interest in the contract, he may sue in his own name. 24 M. 134 An auctioneer is entitled to sue for recovery of the price of goods sold against a purchaser at auction. 86 P. R 1884. The liability of an agent is not personal. 5 C. 71. The managing partner of an ancestral trading firm can alone sue. 2 A. L. J. 3=27 A. 361. Where agent is doing an unauthorized act, the principal is not bound though deriving benefit therefrom. Where agent does not disclose principal's name, there can be no claim against principal A. I. R 1932 Nag 27=27 N L R. 324=135 Ind. Cas. 401 Where principal is unregistered corporation, servants of corporation are still not personally liable. A. I R. 1933 Lah. 93=145 Ind. Cas. 178. Where principal is disclosed he is liable for agent's acts. A. I. R. 1934 Pat. 269=150 Ind. Cas. 671 ; see also A. I. R. 1934 Pat. 435.

Rights of parties to a contract made by agent not disclosed.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Notes—This section deals with the rights (a) of the principal and (b) of the third party in cases when the contract is entered into by the agent without disclosing his principal. The third party's right to repudiate the contract arises only when the principal himself makes the disclosure; it cannot arise when the disclosure is made by some other person or the information reaches him from some other source. 6 Bom. L. R. 731. The principal can sue where the Railway receipt is given in the name of agent. 92 Ind. Cas. 1007 Partnership is not liable for partner's own debt. A. I R. 1925 Cal. 29; see also 28 C W
principal are not liable unless principal is undis
=216=14 P. L T. 149=A I. R 1933 Pat. 19
principal an option to proceed against the other
the former is liable to bring his case within the purview of s. 211 there is nothing in s 231 which could be said to debar him from seeking his remedy under s. 211. A. I. R. 1934 Cal. 721=61 C. 504=152 Ind. Cas. 33.

Performance of contract with agent supposed to be principal.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he required the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case C cannot compel B to take the rice without allowing him to set-off A's debt.

Right of person dealing with agent personally liable.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

Notes.—The liability of a principal and his agent is not joint but alternative. According to this section a person at his election may sue either or he may sue both
udgment against
A. C 11. When
d party. A. I. R.
s. 194. In a suit
in reality acting
ng proprietor of
so and so. 115 Ind. Cas. 400. In a suit by agent against principal, agent can prove that contracts entered by him in his name were on principal's behalf. 142 Ind. Cas. 52=26 S. L. R. 85=A. I. R. 1933 Sind 34.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Liability of pretended agent.

235. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Notes.—There is no distinction in principle between the case of a man who represents that he has authority from another when he has no authority whatever, and the case of a man who represents that he has certain authority from another when

121 Ind. Cas. 153; see also A. I. R. 1934 Pesh. 49; A. I. R. 1933 Sind 207.

Person falsely contracting as agent not entitled to performance.

236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

as agent but on his own account. 51 C 588=81 Ind Cas. 721; see also 17 C. 449; 42 C 950; 18 Q B. D 708; 39 C 802; 13 Ind. Cas. 94=34 A 168. Section 236 is not restricted to cases where agent purports to act for named principal. A. I. R 1933 Sind 207

Liability of principal inducing belief that agent's unauthorized acts were authorized.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations.

(*a*) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(*b*) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

Notes—The rule "that whenever one of two innocent parties must suffer by the act of a third person, he who has enabled such person to occasion the loss must

385=25 S. L. R. 253=A. I. R. 1931 Sind 144; see also A. I. R. 1931 Cal. 423=58C. 7=132 Ind. Cas. 907.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Effect, on agreement, of misrepresentation or fraud by agent.

Illustrations.

(*a*) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(*b*) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

Notes—There is nothing in this section to show that in order to render the principal liable the fraud must be committed for the benefit of the principal. It is enough if the fraud is committed by the agent in the course of his business for the principal, *i. e.*, in matters falling within the scope of his authority. 50 C. 258=1923 Cal. 157.

CHAPTER XI.*

SCHEDULE—Enactments Repealed.

Statutes.

No. and year of Statute.	Title.	Extent of repeal.
Stat. 29 Car II, cap. 3, †	An Act for prevention of frauds and perjuries.	Sections 1, 2, 3, 4 and 17
Stat. 11 and 12 Vict. cap. 21 ‡	To consolidate and amend the law relating to insolvent debtors in India.	Section 42

Acts.

No. and year of Act.	Title.	Extent of repeal.
Act XIII of 1840.	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 4 Geo. IV, Chap 83, as altered and amended by the Stat. 6 Geo. IV, Chap 94	The whole.

* This chapter has been repealed by Act IX of 1932.

† Short title, "The Statute of Frauds"—See the Short Titles Act, 1896 (59 and 60 Vict. c 14).

‡ The Indian Insolvency Act, 1848.

No. and year of Act.	Title.	Extent of repeal.
Act XIV 1840.	A[illegible] IV, Chap. 14.	The whole
Act XX of 1844.	An Act to amend the law relating to advances *bonafide* made to Agents entrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 5 & 6 Vict c. 39, as altered by this Act.	The whole.
Act XXI of 1848.	An Act for avoiding wagers. ...	The whole.
Act V of 1866*	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Sections 9 & 10.
Act XV of 1866.	An Act to amend the law of partnership in India.	The whole.
Act VIII of 1867.	An Act to amend the law relating to horse-racing in India.	The whole.

THE CO-OPERATIVE SOCIETIES ACT, 1912. †

ACT NO. II OF 1912.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 1ST MARCH, 1912.

An Act to amend the law relating to Co operative Societies.

WHEREAS it is expedient further to facilitate the formation of Co-operative Societies for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means, and for that purpose to amend the law relating to Co-operative Societies; It is hereby enacted as follows:—

Object of the Legislation.—Legislation is called for not only in order to lay down the fundamental conditions which must be observed but also with a view to giving Co-operative Societies a corporate existence without resort to the elaborate provisions of the Companies Act; but it is thought that legislation should be confined within the narrowest possible limits. The bill has, therefore, been drawn so as to deal only with those points which the Government consider to be essential, and its provisions have been expressed in simple and general terms, a wide rule-making power being reserved to Local Governments, so that what is left to be of the nature of an experiment may be tried in each province or part of province on such lines as seem to afford most promise of success.—*Statement of Objects and Reasons.*

Defects of Co-operative Societies Act of 1904.—(1) The Act of 1904 applied to societies for the purpose of Co operative Credit only and not to Co-oper-

* S[illegible] e) Assignment Act 1866."

† T[illegible] Bombay Act V 1925

ative Societies of other kinds, such as those established for production or distribution. It has in practice been found that the establishment of Credit Societies has led to the founding of other classes of Co-operative Societies also, and it is advisable that the privileges extended by the Act to Co-operative Credit Societies should be extended ct as now revised

they were "Urban" rule rural societies vas adopted mainly commended and put n parts of India, but has in practice been found artificial and inconvenient. The real distinction is between Societies with limited and those with unlimited liability, and it is proposed in the new Bill to maintain this distinction only while retaining the principle that Agricultural Credit Society must as a general rule be with unlimited liability.

(iii) The Act of 1904 did not contemplate that Societies with unlimited liability should distribute profits. It is still felt that such Societies do not represent the best form of Co-operation for agricultural communities but this form of society has, in practice, been for some time in existence in several provinces, and Societies of the recognized to be capable of useful ive them undue encouragement, it it unlimited society, with the sanc-

(iv) A cardinal principle which is observed in the organization of Co-operative Societies in Europe is the grouping of such Societies into unions and then financing by means of Central Banks This stage of Co-operation has not been fully realised but such grouping of Societies has already been and it is now considered desirable to legalise it Societies of which the members shall be other Co-operative Credit Societies.—*Statements of Objects and Reasons.*

Interpretation.—It should be strictly construed. A I. R. 1931 Lah. 631.

Preliminary

Short-title and extent.

1. (1) This Act may be called the Co-operative Societies Act, 1912 ; and

(2) It extends to the whole of British India.

Co-operative Societies Act is to encour-

for the settlement of their disputes, have worry of an extensive and protracted litig society and member the substitutional remedy provided under the rules in the shape of a reference to the Registrar must be availed of and the common law remedy by an action in a Civil Court must, by necessary application, be deemed to have been taken away. 71 Ind. Cas. 722

Definitions.

2. *In this Act*, unless there is anything repugnant in the subject or context,—

(*a*) "by-laws" means the registered by-laws for the time being in force,

(*c*) "member" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by-laws and any rules ;

(*d*) "officer" includes a chairman, secretary, treasurer, member of commitee, or other person empowered under the rules or the by-laws to give directions in regard to the business of the society ;

(*e*) "registered society" means a society registered or deemed to be registered under this Act ;

(*f*) "registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act : and

(*g*) "rules" means rules made under this Act.

Notes.—The definitions of some of the terms are taken from the Friendly Societies Acts, 1896 and 1908 (56 & 60 Vict. c. 25).

Clause (c).—Member includes Hindu joint family. 142 Ind. Cas. 487=A. I. R. 1933 Nag. 211 ; but see A. I. R. 1931 Nag. 48=130 Ind. Cas. 820.

Clause (d) —Legal adviser of society is "officer" of society. 145 Ind. Cas. 438=1933 M. W. N. 977=65 M. L. J. 367=A. I. R. 1933 Mad. 682.

Registration.

The Registrar.

3. The Local Government may appoint a person to be Registrar of Co-operative Societies for the Province or any portion of it, and may appoint persons to assist such Registrar, and may, by general or special order, confer on any such persons all or any of the powers of a Registrar under this Act.

Notes.—In this section provision has been made for investing in persons, other than Registrars, the power of a Registrar—*Vide Statement of Objects and Reasons.*

Societies which may be registered.

4. Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability :

Provided that unless the Local Government by general or special order otherwise directs—

(1) the liability of a society of which a member is a registered society shall be limited :

(2) the liability of a society of which the object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited.

Notes—Under the Indian Companies Act a foreign corporation cannot be registered *Bulkeley* v *Schutt*, L. R. 3 C P. 764 ; *Bateman* v *Service*, (1881) A. C. 386 A decree obtained against Co-operative Society cannot be executed against members in their individual capacity. 150 Ind Cas 172=39 L. W. 143=1934 M. W. N. 329=A. I. R. 1934 Mad. 181

Restrictions on interest of member of society with limited liability and a share capital

5. Where the liability of the members of a society is limited by shares, no member other than a registered society shall—

(*a*) hold more than such portion of the share capital of the society, subject to a maximum of one-fifth, as may be prescribed by the rules , or

(*b*) have or claim any interest in the shares of the society exceeding one thousand rupees.

Conditions of registration

6. (1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consist of at least ten persons above the age of eighteen years and, where the object of the society is the creation of funds to be lent to its members, unless such persons—

(*a*) reside in the same town or village or in the same group of villages ; or,

(*b*) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation.

(2) The word 'limited" shall be the last word in the name of every society with limited liability registered under this Act.

Notes—In this section provision is made to maintain the existing restrictions as to residence or class obligatory before registration in the case of Credit Soc

and to render the existence of ten members obligatory before registration in the case of all kinds of Co-operative Societies other than those, all the members of which ... r given the power of ... the same occupa- ... *Statement of Objects* ...

7. When any question arises whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste or occupation, the question shall be decided by the Registrar, whose decision shall be final.

Power of Registrar to decide certain questions.

Notes.—In these matters the decision of the Registrar is final and no suit lies in a civil Court against his decision.

8. (1) For purposes of registration an application to register shall be made to the Registrar.

Application for Registration.

(2) The application shall be signed—

(*a*) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of section 6, sub section (1); and

(*b*) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies, by ten other members or, when there are less than ten other members, by all of them.

(3) The application shall be accompanied by a copy of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

Notes.—This section corresponds to section 9 of the Friendly Societies Act, 1896.

9. If the Registrar is statisfied that a society has complied with the provisions of this Act and the rules and that its proposed by-laws are not contrary to the Act or to the rules, he may, if he thinks fit, register the society and its by-laws.

Registration.

Notes.—This section giving conclusive authority to the Registrar's certificate of registration as new.—*Statement of Objects and Reasons*

10. A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.

Evidence of registration

... persons, and that it is conclusive that all ... with." See also (1897) A. C. 22; *Peel's Case*, (1867) 2 Ch 674.

11. (1) No amendment of the by-laws of a registered society shall be valid until the same has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar.

Amendment of the by laws of a registered society.

(2) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the rules, he may, if he thinks fit, register the amendment.

(3) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

Notes.—By this section it is provided that no amendment of a rule shall be valid until it has been registered. In connection with a similar provision in the English Friendly Societies Act, in *Battey* v. *Townrow*, (1814) 4 Camp 5, *Lord Ellenborough*, observed: "The section which permits an alteration of rules, provides that such alteration should be subject to the review of the justices and shall have no force or effect until confirmed by them." So where the altered rules were never enrolled, the rules as altered cannot legally be acted upon. *R.* v. *Godolphin*, 8 A. & E. 388; see also *R.* v. *Cotton*, 15 Q. B. 569; *Meredith* v. *Willingham*, 1 C. B. N. S. 216; *Dewhurst* v. *Clarkson*, 3 El. & Bl. 194; *Smith* v. *Gelleway*, (1898) 1 Q. B. 71.

Rights and liabilities of members.

Member not to exercise rights till due payment made.

12. No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the rules or by-laws.

Votes of members.

13. (1) Where the liability of the members of a registered society is not limited by shares, each member shall, notwithstanding the amount of his interest in the capital, have one vote only as a member in the affairs of the society.

(2) Where the liability of the members of a registered society is limited by shares, each member shall have as many votes as may be prescribed by the by-laws.

[illegible] y part of its funds in the [illegible] its proxy, for the purpose [illegible] any one of its members.

[illegible] vote only [illegible] ce of a m [illegible]). 70. A s [illegible] There propriety or impropriety of the motive is immaterial, *Pender* v. *Lushington*, *Ibid.* *Prima facie*, there is no right to vote by proxy, for the common law does not recognize any such mode of voting But where such power is given by the Act or by the law, a vote by proxy is allowed.—*Vide* Palmer's Company Law, p. 172.

Restrictions on transfer of share or interest.

14. (1) The transfer or charge of the share or interest of a member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules.

(2) In case of a society registered with unlimited liability a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless—

(*a*) he has held such share or interest for not less than one year; and

(*b*) the transfer or charge is made to the society or to a member of the society.

Notes—In *Bennet* v. *Slater*, (1899) 1 Q B. C. A. in connection with the Friendly Societies Act, 1875, *Vaughan Williams L. J.* said: "In this case the question really raised is whether or not a policy issued by a Friendly Society governed by the Act of 1875, is or is not assignable, and I have come to the conclusion that it is assignable. Where a policy is taken out for a sum of money which is payable to the member who takes out the policy, or his personal representative, by virtue of the contract entered into, no one will deny for a moment that such a sum of money, *prima facie*, is part of the property of the member or the estate of the deceased member, as the case may be, therefore we must find something in the Act of 1875 or in the rules of the society, which prevents this particular property having this ordinary incident of property. Now it is admitted on both sides that there is

whatsoever in either Act of Parliament or the rules which expressly prevents the moneys payable under this policy, or the policy itself, from being assignable. If, therefore, the policy is not assignable it must be from some implication arising out of the statute". So there must be some restrication as regards transfer in the section.

Duties of registered societies.

Address of societies

15. Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change thereof.

Notes—This section corresponds to section 72 of the Indian Companies Act. The registered office need not be and very commonly is not, in the exclusive occupation of the company, and no part of the company's business need be carried on there—Rustomjee's Companies Act, p. 89.

Copy of Act, rules and by-laws to be open to inspection.

16. Every registered society shall keep a copy of this Act and of the rules governing such society, and of its by-laws, open to inspection free of charge at all reasonable times at the registered address of the society.

make extracts. *Matters* v. . *Land Agency*, (1897) 1 Ch. assign any reason. *Holland* v. *Dickson*, 37 Ch D 669—*Vide* Palmer's Company Law, p. 222

Audit.

17. (1) The Registrar shall audit or cause to be audited by some person authorized by him by general or special order in writing in this behalf the accounts of every registered society once at least in every year.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, and a valuation of the assests and liabilities of the society.

(3) The Registrar, the Collector or any person authorized by general or special order in writing in this behalf by the Registrar shall at all times have access to all the books, accounts, papers and securities of a society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

Notes.—Tl
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confined to that. But then comes the question, how is he to ascertain the position? The answer is · by examining the books of the company. But he does not discharge his duty by doing this without enquiry and without taking any trouble to see that the books themselves show the company's true position. (1896) 2Ch 284.

Privileges of registered societies.

Societies to be bodies corporate.

18. *The registration of a society shall* render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.

Notes.—The Chairman of a Co-operative Credit Society has no right to institute a suit against a member of the society under the Co operative Credit Societies Act, in his own name. The suit should be one by the society under s. 6, cl. 2 of Act X of 1904. A suit in the name of the chairman must fail. 10 Ind Cas. 570. A society can bring a suit for defamation. In *Hill* v. *Hart Davies*, (1882) 21 Ch. D. 798, *Kay J* said: "I have no doubt whatever about it It seems to me that it is perfectly settled that any libel which is calculated to injure another man in his trade, or a trading company, will be restrained by injunction, and although there has been, it is said, no reported case which applies that law and practice to a

Friendly Society or Joint Stock company, I have not least doubt that it is as applicable to the case of a Friendly Society or a Joint Stock Company as it is to an individual trader, because everybody who has the least knowledge of what goes on in the world, and particularly of what goes on in a Court of Justice, must be perfectly well aware that nothing is more sensitive to evil report and to false statements than a society like a Friendly Society or, a Joint Stock Company, and if a libel ... him in his business can be and ... ms to me *a fortiori* that a libel ... ness should also be restrained by ... to render it a body corporate. The remedy of a creditor in sections 36 and 39 and the exception right of Government under s. 44 to have direct recourse against the members demonstrates the general rule to the contrary. 12 Pat L. T. 619=A. I. R. 1931 Pat 321. (F. B)=12 P. L. T. 619=134 Ind. Cas 421.

Prior claim of society

19. Subject to any prior claim of the Government in respect of land-revenue or any money recoverable as land-revenue or of a landlord in respect of rent or any money recoverable as rent, a registered society shall be entitled in priority to other creditors to enforce any outstanding demand due to the society from a member or past member—

(*a*) in respect of the supply of seed or manure or of the loan of money for the purchase of seed or manure—upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan ;

(*b*) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture, or of the loan of money for the purchase of any of the foregoing things—upon any such things so supplied, or purchased in whole or in part from any such loan, or on any articles manufactured from raw materials so supplied or purchased.

Notes—*This section extends from one year to 18 months the term of lien on* agricultural products and permits a lien on articles manufactured from raw materials supplied by or with the help of registered society. *Statement of Objects and Reasons.* By an application made under section 73 of the Code of Civil Procedure a registered Co-operative Society cannot enforce its prior claim within the meaning of this section as against a judgment-creditor at whose instance property is going to be sold if they have no decree or a charge under section 20 of the said Act Other remedies may still be open to such society. 18 C W. N. 1140 Musical instruments can not be described as 'Industrial implements" or machinery within the meaning of this section ; nor do they come within any other part of the category of articles referred to in that section. 38 Ind. Cas. 414. The money advanced by a Co-operative Credit Society registered under this Act for purchasing fat to be sold at a profit, out of which no other commodity is to be manufactured is not a charge upon it (fat) as under these circumstances it can not be called "raw material" within the purview of s. 19 (b) of the Act. 39 Ind Cas. 373=19 P. L. R 1917=3 P. W R. 1917.

Charge and set-off in respect of shares or interest of member.

20. A registered society shall have a charge upon the share or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt

... of the Code of Civil Procedure ... its prior claim within the ... whose instance property is ... under section 20 of this Act. ... C. W. N. 1140. So long as a Co-operative Society is carrying on business, it cannot be held to be precluded from exercising the right of set-off mentioned in this section. *In re Gwawsry Gweithy v. Industrial and Provident Society, Davy v. Morgan*, (1901) 2 K. B. 477.

Shares or interest not liable to attachment.

21. Subject to the provisions of section 20, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency towns Insolvency Act, 1909,* nor a Receiver under the Provincial Insolvency Act, 1907† shall be entitled to or have any claim on such share or interest.

Transfer of interest on death of member

22. (1) On the death of a member a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member, or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by laws :

Provided that—

(i) in the case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid ;

(ii) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and by-laws for membership of the society, or on his application within one month of the death of the deceased member to any person specified in the application, who is so qualified.

(2) A registered society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person

Notes—According to s 58 of the English Friendly Societies Act, 1896, in default of nomination by a member, a society may distribute any sum not exceeding one hundred pounds on his death intestate, "without letters of administration, amongst such persons as appear to a majority of the trustees (or in an industrial and provident society, the committee of managemen [illegible] satisfactory, to be entitled by law to [illegible] excess of the provisions of s 22, proviso [illegible] the death of a member his share or inter[illegible] sentative who is qualified under the Act even though he has not been duly elected as such as provided by by-law Rule 17 (b) A. I. R. 1934 Cal. 537=38 C. W. N. 459=A. L. R. 1934 Cal. 569=151 Ind. Cas. 165.

The power of the committee to distribute the property is entirely discretionary, and they cannot be compelled by action to exercise their discretion. *Esserill* v. *Todmorden Co-operative Society*, (1896) 1 Q. B. 461.

Liability of past member.

23. The liability of a past member for the debts of a registered society as they existed at the time when he ceased to be a member shall continue for a period of two years from the date of his ceasing to be a member.

Liability of the estates of deceased members.

24. The estate of a deceased member shall be liable for a period of one year from the time of his decease for the debts of a registered society as they existed at the time of his decease.

* Act III. of 1909. † Act III. of 1907.

Notes.—Section 24 cannot be called to aid except in liquidation proceedings under this section. 84 Ind. Cas. 964. The provisions of this section are only ... n 42 of ... 24 as ... 254.

25. Any register or list of members or shares kept by any registered society shall be *prima facie* evidence of any of the following particulars entered therein :—

Register of members.

(*a*) the date at which the name of any person was entered in such register or list as a member ;

(*b*) the date at which any such person ceased to be a member.

Notes.—This section is ... Provident Societies Act. ... the date of commencement ... *Reasons.*

26. A copy of any entry in a book of a registered society regularly kept in the course of business, shall, if certified in such manner as may be prescribed by the rules, be received, in any suit or legal proceeding, as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

Proof of entries in societies' books.

Notes.—This section is also based on provisions in the English Industrial and Provident Societies Act. It provides for proof of entries in the books of a registered society

Exemption from compulsory registration of instruments relating to shares and debentures of registered society.

27. Nothing in section 17, sub section (1), clauses (*b*) and (*c*), of the Indian Registration Act, * 1908, shall apply to—

(1) any instrument relating to shares in a registered society, notwithstanding that the assets of such society consists in whole or in part of immovable property ; or

(2) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or

(3) any endorsement upon or transfer of any debenture issued by any such society.

Notes.—Various facilities are given in this Act to encourage Co-operative Societies.

Power to exempt from income-tax, stamp-duty and registration-fees

28. †(1) The Governor General in Council by notification in *the Gazette of India* may, in the case of any registered society or class of registered society, remit‡ the income-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits ;

* * * * *

"(2) The Local Government, by notification in the local official Gazette, may, in the case of any registered society or class of registered society, remit—

(*a*) the stamp duty with which, under any law for the time being in force,

* XVI of 1908.

† Re-numbered by Act 38 of 1920.

‡ Certain words after this were omitted by Act 38 of 1920.

instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable ; and

(*b*) any fee payable under the law of registration for the time being in force."*

Notes.—*By s. 33 of the Friendly Societies Act, 1896, societies registered under* that act are entitled to certain exemption from stamp duty ; see also *Royal Liver Friendly Society*, L. R. 5 Ex. 78.

Property and funds of registered societies.

Restrictions on loans.

29. (1) A registered society shall not make a loan to any person other than a member :

Provided that, with the general or special sanction of the Registrar, a registered society may make loans to another registered society.

(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of movable-property.

(3) The Local Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immovable property by any registerded *society or class of registered societies.*

Notes —A by-law of a Co-operative society to the effect that the Society shall not sell goods on credit to a non-member cannot have the force of law but can be

[illegible]

money paid under implied contract to repay. 96 Ind. Cas. 95.

Restrictions on borrowing.

30. A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by-laws.

Notes.—By this section it is made clear that a registered society is not precluded from receiving deposits from non-members *Statement of Objects and Reasons.*

Restrictions on other transactions with non-members.

31. Save as provided in sections 29 and 30, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the Local Government may, by *rules*, prescribe

Investment of funds

32. (1) A registered society may invest or deposit its funds—

(*a*) in the Government Savings Bank, or

(*b*) in any of the securities specified in section 20 of the Indian Trusts Act 1882,† or

(*c*) in the shares or on the security of any other registered society, or

(*d*) with any bank or person carrying on the business of banking, approved for this purpose by the Registrar, or

(*e*) *in any other mode permitted by the rules.*

(2) Any investments or deposits made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed.

Notes —T [illegible]
validates inves [illegible]
this section.— [illegible]

* The words within quotations have been inserted by Act 38 of 1920

† Act II of 1882.

Funds not to be divided by way of profit.

33. No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members:

Provided that after at least one-fourth of the net profits in any year has been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made to the members to such extent and under such conditions as may be prescribed by the rules or by-laws:

Provided also that in the case of a society with unlimited liability no distribution of profits shall be made without the general or special order of the Local Government in this behalf.

Notes.—After keeping a reserve of 25 p. c. of the profit the remainder may be distributed among the members in accordance with the rule of the society

Contribution to charitable purpose.

34. Any registered society may, with the sanction of the Registrar, after one-fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding ten per cent. of the remaining net profits to any charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1890.*

Notes.—This provision allowing contributions to charities is new—*Statement of Objects and Reasons.*

Inspection of affairs.

Inquiry by Registrar.

35. (1) The Registrar may of his own motion, and shall on the request of the Collector, or on the application of a majority of the committee, or of not less than one-third of the members, hold an inquiry or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society.

(2) All officers and members of the society shall furnish such information in regard to the affairs of the society as the Registrar or the person authorized by the Registrar may require.

Notes.—This section allows a registrar to conduct an enquiry by deputy—*Statement of Objects and Reasons.*

Inspection of books of indebted society.

36. (1) The Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorized by him by order in writing in this behalf to inspect the books of the society:

Provided that—

(*a*) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(*b*) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the results of any such inspection to the creditor.

Notes.—This provison of allowing a creditor to require an inspection is new. It is based on a similar provision in the Companies Act—*vide Statement of Objects and Reasons.*

Costs of inquiry.

37. Where an inquiry is held under section 35, or an inspection is made under section 36, the Registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, and the officers or former officers of the society.

* VI of 1890.

Notes—The party at fault should bear the cos . . . . is like the order of a Court and can be enforced having jurisdiction in the place where the person . . . . . actually and voluntarily resides or carries on business. (*Vide section 18 infra*)

Recovery of costs.

38. Any sum awarded by way of costs under section 37 may be recovered, on application to a Magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides or carries on business, by the distress and sale of any movable property within the limits of the jurisdiction of such Magistrate belonging to such person.

Notes.—To encourage Co-operative Societies, this summary procedure has been provided.

Dissolution of society.

Dissolution.

39. (1) If the Registrar, after an inquiry has been held under section 35 or after an inspection has been made under section 36 or on receipt of an application made by three-fourths of the members of a registered society, is of opinion that the society ought to be dissolved, he may cancel the registration of the society.

(2) Any member of a society may, within two months from the date of an order made under sub section (1), appeal from such order.

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period

(4) Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the appellate authority.

(5) The authority to which appeals under this section shall lie shall be the Local Government:

Provided that the Local Government may, by notification in the local official Gazette, direct that appeals shall lie to such Revenue-authority as may be specified in the notification.

Notes—This section makes provision for the dissolution of a Co operative Society. The procedure to be adopted before dissolution is also very simple.

Cancellation of registration of society.

40. Where it is a condition of the registration of a society that it should consist of at least ten members, the Registrar may, *by order in writing, cancel the registration of the* society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten.

Notes.—The term 'member' does not include past members or representatives of deceased members or trustees of bankrupt members (1895) 1 Ch. 563.

Effect of cancellation of registration.

41. Where the registration of a society is cancelled, the society shall cease to exist as a corporate body—

(*a*) in the case of cancellation in accordance with the provisions of section 39, from the date the order of cancellation takes effect;

(*b*) in the case of cancellation in accordance with the provisions of section 40, from the date of the order.

Notes.—By registration a society acquires its corporate character and when the registration is cancelled, its corporate character goes with it also.

Winding up.

42. (1) Where the registration of a society is cancelled under section 39, or section 40, the Registrar may appoint a competent person to be liquidator of the society.

(2) A liquidator appointed under sub-section (1) shall have power—

(a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office;

(b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society;

(c) to investigate all claims against the society, and subject to the provisions of this Act, to decide questions of priority arising between claimants;

(d) to determine by what persons and in what proportions the costs of the liquidation are to be borne; and

(e) to give such directions in regard to the collection and distribution of the assets of the society, as may appear to him to be necessary for winding up the affairs of the society

(3) Subject to any rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.*

(4) Where an appeal from any order made by a liquidator under this section is provided for by the rules, it shall lie to the Court of the District Judge.†

(5) ‡ Orders made under this section shall, on application, be enforced as follows:—

(a) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court;

(b) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein.

(6) Save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act.

Notes—Where the liquidator of a registered society passes an order such as ... same is not appealable. 94 Ind. Cas 40=A. I. ... called to aid except in liquidation proceeding ... Where the liquidator of a Co-operative So- ... the credit of a member in payment of a debt of another member, the member whose money has been so utilized can sue the other member in a Civil Court for the recovery of the amount under s. 42 Cl.(b), Co-operative Societies Act is no bar to such a suit. Section 42 (6), of the Co-operative Societies Act, is intended to prevent the litigation in the Civil Courts in regard to the validity of the actions and decision of a liquidator under the Act except in respect of certain specified orders which are appealable to a District Court or which may be enforced as decrees of Courts. 84 Ind Cas 964=A. I. R 1925 Rang. 38 Under s. 42 (b) a liquidator made an order declaring certain members of a society registered

thereunder should be settled without litigation in the Courts, otherwise the whole object of the Act would be defeated. 15 A. L J. 863. The Civil Court has no

* In its application to British Baluchistan this sub-section shall be read as if the words "or the British Baluchistan Civil Justice Regulation, 1896, as the case may be" were added, *vide* Sch. I of Reg II of 1913

† For sub-section (4 A) which applies to U. P. and Madras only, *see* U. P. Act 3 of 1919 and Mad. Act 10 of 1920

‡ This sub-section has been modified in its application to U. P. and Madras *vide ibid.*

jurisdiction to interfere with an order passed by a liquidator of a registered Co-operative Society in order to collect the assets of the society from persons who he thinks are responsible to account to him for the assets. 44 B. 582=22 Bom. L. R. 732=57 Ind. Cas. 423. A Civil Court cannot in view of clause (b) entertain a suit for a declaration that an order of the liquidator passed under clause (2) is *ultra vires* and without jurisdiction and cannot be executed. 44 Ind. Cas. 353=4 O. L. J. 583. One member of executive committee can not sue others to recover sums which he is
made to pay to the
tion that property
civil suit for refund
(a) of the Co-opera
of U. P. Land Rev
Land Revenue Act. A. I. R. 1927 All. 532 ; 19 A. 127. The provisions of the

of the society. 130 Ind. Cas.
orders is shown to be *ultra*
by law as a liquidator, the Civil
no power to proceed against
any body and every body irrespective of the fact that he had ever been a member of the society and section 42(b) can not be so construed as to oust the jurisdiction of the Civil Courts in cases where the liquidator passes an order against a person who is not a member of the society. 130 Ind. Cas 820=A. I. R. 1931 Nag. 48. A liquidator can arrest the heir of a deceased member of a Co operative Society for an arrear due from his deceased father. 107 Ind. Cas. 243=A. I. R. 1928 All. 128. The order of the liquidator under s 42 is final and the Civil Court in execution of the order cannot go behind it. If the order is thus enforced there is no error of jurisdiction on the part of the Civil Court and revision to High Court does not lie. 129 Ind. Cas 908=7 Rang 533=A. I. R. 1930 Rang. 18. When liquidator directed members of executive committee to make payment the order is final and the Civil Court has no jurisdiction to entertain a suit by the executive members to recoup themselves the amount from the ordinary members. 103 Ind. Cas. 644=A. I. R. 1927 Cal. 578. This section is no bar to a Civil Court by a member of the society against the purchaser for declaration that the property attached and sold for debt due from him was liable to be sold. 103 Ind. Cas. 131=23 N. L. R. 66=A. I R. 1927 Nag. 217. Application for execution of order determining liability of member without taking evidence should be dismissed. 145 Ind Cas. 834=37 C. W. N. 177=A. I R 1933 Cal. 631. Member's liability can be enforced only by winding up and not by suit. A. I. R. 1933 Bom. 191=57 B. 319=35 Bom L R. 282 Civil Court has jurisdiction to decide whether certain person is member of bank or not. Liquidator is given power only to determine contribution to be made by member. 144 Ind. Cas. 264=34 P. L. R.
ain a suit for a declaration
is *ultra vires.* 4 O. L. J.
42 must be enforced by
order under this section.
22 Bom. L R. 732=44 B.
Society" includes disputes
arising out of particular transactions and disputes between members and officers. The words of section 42 are very general and do not merely refer to a dispute regarding the internal management of the affairs of a society or disputes in regard to the principles which would regulate the conduct of business. A I. R. 1923 Mad. 481=72 Ind. Cas. 838=44 M. L. J. 382. There is nothing in s. 42 (6), Co-operative Societies Act, to prevent the Court from entertaining the application of one of the debtors of a Co-operative Society which is in liquidation for being declared insolvent. In deciding whether such a debtor should or should not be adjudicated insolvent the Court is not dealing with any matter connected with the dissolution of the Society nor will the dissolution be necessarily interfered with by reason of adjudicating such a debtor to be an insolvent. *Musan Mahton v. Central Co-operative Bank*, A. I. R. 1934 Pat. 290=149 Ind. Cas. 96. A Civil Court has no jurisdiction to question the legality of the acts of a liquidator in the

matter connected with the dissolution of a registered society. Hence where a liquidator fixes the contribution due by a member and the money is realized, a suit by such member to realize the amount is not cognizable by the Civil Court. A. I. R. 1934 Oudh 431=11 O. W. N. 1060=151 Ind. Cas. 414. A decree against a Co-operation Society as a corporate body cannot be executed against share-holder or member by arrest and attachment of his movable or immovable property. The individual liability does not arise until the state of winding up is reached. A. I. R. 1934 Mad. 181=150 Ind. Cas. 172=66 M. L. J. 475.

Rules

43. (1) The Local Government may, for the whole or any part of the Province and for any registered society or class of such societies, make rules to carry out the purposes of this Act

Rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) subject to the provisions of section 5, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member;

(*b*) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications;

(*c*) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and abrogating by-laws, and the conditions to be satisfied prior to such making, alteration or abrogation;

(*d*) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payment to be made and the interests to be acquired before the exercise of the right of membership;

(*e*) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;

(*f*) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;

(*g*) provide for the appointment, suspension and removal of the members of the committee and other officers, and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers;

(*h*) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance-sheet showing the assets

submitted by a society to the Registrar and the form in which such returns shall be submitted;

(*j*) provide for the persons by whom and the form in which copies of entries in books of societies may be certified,

(*k*) provide for the formation and maintenance of a register of members and, where the liability of the members is limited by shares, of a register of shares;

(*l*) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the Registrar or the awards of arbitrators;

(*m*) provide for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members ;

(*n*) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred ;

(*o*) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent, to an individual member ;

(*p*) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society ;

(*q*) prescribe the extent to which a society may limit the number of its members ;

(*r*) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies ;

(*s*) subject to the provisions of section 39, determine in what cases an appeal shall lie from the orders of the Registrar, and prescribe the procedure to be followed in presenting and disposing of such appeals ; and

(*t*) prescribe the procedure to be followed by a liquidator appointed under section 42, and the cases in which an appeal shall lie from the order of such liquidator.

(3) The Local Government may delegate, subject to such conditions, if any, as it thinks fit, all or any of its powers to make rules under this section to any authority specified in the order of delegation.

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(5) All rules made under this section shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Act.

Notes.—Sub-clause 2 (m) and (t) and 3 are new. The two former allow the Local Government to prescribe returns and the procedure on liquidation, and the latter permits of the delegation of the powers of the Local Government.—*Vide Statement of Objects and Reasons.* Where a dispute lies between a Co-operative Society and a member who is dead proceedings can be continued or entertained between the society and the legal representatives of the deceased debtor and arbitrators appointed under the rules framed under this section are competent to decide who are the legal representatives of the deceased debtor. If a wrong conclusion is arrived at with regard to a particular person then that person has a remedy under the Act of filing an appeal to the Registrar. The Civil Court has no jurisdiction to interfere 28 Bom. L. R. 598 = 96 In [illegible]

[illegible] ing [illegible] ase [illegible]

[illegible] ocieties Act falls under rules [illegible] ection 43 of the Act. Among [illegible] rule is "any dispute touching the business of a society between members [illegible] Business here is not confined to money business [illegible] bearers As the rules provide for reference of [illegible]

[illegible] sums were ordered to be entered in the Bank's registers. The dispute was submitted

to the Registrar who was asked to take the
Deputy Registrar treated the resolution as
award for the whole amount against A's heirs

the Act. A. I R 1932 Lah. 53

a Madras Rule is not beyond the rule-making powers granted by section 43. A. I. R. 1928 Mad 210=103 Ind. Cas 768. The words "touching the business of a society" in s 43 (2) (e) of Act II of 1912 are not confined to disputes in connection with the internal management of the affairs of a society or disputes in regard to principles which would regulate the conduct of the business thereof. 28 C. W. N 131=A. I. R. 1924 Cal. 467=39 C L J. 140=82 Ind. Cas. 934 The object of the section is to encourage thrift and prevent litigation. The substitutional remedy of reference to the Registrar bars the remedy in a Civil Court A. I. R. 1924 Lah 418=71 Ind. Cas. 722. A reference to arbitration under the provisions of the second schedule of the Civil Procedure Code is entirely distinct from the procedure contemplated by Rule 20 of the Rules of the U. P. Goverenment under the Act. 47 A. 374=23 A L J 129=A. I. R. 1925 All 356=86 Ind Cas 585. Rules 31 and 34 provide that awards are to be enforced as decrees. Court having power to execute them can transfer them for execution. 24 Bom. L. R. 909=A. I. R. 1922 Bom 449=65 Ind. Cas. 212 ; see also 46 B. 128 ; 23 Bom. L R. 909=64 Ind Cas. 337. Award against representative of deceased debtor affects the deceased only. A. I. R. 1933 Lah. 376 Objection that one of judgment debtors is not member of societies and reference was invalid cannot be taken at appellate stage. 143 Ind. Cas. 471=55 C. L. J. 89=36 C. W. N. 121=A I. R. 1933 Cal. 267. Rule 22(6) does not take away jurisdiction of Court to enquire into validity of award. 143 Ind. Cas R 1933 Cal 267. Rule 22 (1) does but see A. I. R 1932 Lah. 53=133 Ind. the Bar who is also a member of society to engage in legal proceedings a vakil and not that of officer or servant of society. 145 Ind. Cas. 438=1933 M. W. N. 977=38 M.L W. 401=65 M. L J. 367=A. I. R. 1933 Mad. 682. Rules under s. 43 depriving right of six months under order 34, rule 2, C. P. Code are not *ultra vires*. A. I R. 1933 Nag. 211=142 Ind. Cas. 487. In Bengal rule 22, the word "disputes" does not include questions of constitution and membership of central bank and such question can be decided by ordinary Courts. 136 Ind. Cas. 506=36 C. W. N. 414=59 C 1165=A I. R. 1932 Cal. 317. Under rule 7 non-representation of minor by proper guardian does not give Civil Court jurisdiction to entertain suit. A. I. R. 1933 Lah. 376. The question as to whether the persons are representatives who are entitled to be substituted in place of a deceased member is not question which relates to the business of the society and is not a matter which should be referred to the Registrar. A. I. R. 1934 Cal. 537=38 C. W. N. 459=151 Ind. Cas. 165. It is only members and persons claiming through members against whom the Registrar can pronounce a decision which can be executed as a Civil Court decree. The society must enforce in the regular course any claim which it may have against outsiders. The decision of the Registrar, so far as it affects a stranger, is a nullity as being made without jurisdiction. A. I. R. 1934 Pat. 145=15 Pat. L. T. 111=A. L. R. 1934 Pat. 116.

The Co-operative Society has complete power to refer any matter in dispute be-

confined to disputes regarding the internal management of the affairs of a society to disputes in regard to principles which would regulate the conduct of business. A dispute between a member who happens to be an officer of a Co-operative Society and tl he former for purchase of c e between a member who
the committee

44 M. L. J. 382=17 L. W. 345=1923 M. W. N. 222=32 M. L. T. (H. C.) 321=72 Ind. Cas. 838=1923 Mad. 481 ; see also 1 Mys L. J. 92.

Clause (b).—The direction of the Act, as to the reference of dispute, has the effect so f ... ding the jurisdiction of superior Courts ... Bing 394 ; *Timms* v. *Wilimas*, (1842) 3 Q ... & L. 679. In *Revers* v. *White*, (1852) 17 ... "Where there may be, there must be a ... & J. 211, *Wood V. C.* Legislature intended ... before Courts of law ... enact that the whole ... summary manner by the decision of an arbitrator or justices as the parties shall choose, and when they have once made their election the power of the justice or of the arbitrator, acting always within the rules of the society, is complete, and is not ... aw or equity. That is the primary matter to ... necessary to be extremely careful that the ... et up to control the arbitrators so selected ... ise being made out of the abuse of their office." See also *Exparte Long* (1854) 3 W. R 18 ; *R.* v. *Evans*, (1854) El. & Bl. 363 But the arbitrators must comply with the procedure laid down in the rules ; otherwise their award is not final. *R.* v *Grant* 14 Q. B D. 43. The words "any dispute" must be read as referring only to disputes between the society and the members as members, and not in any other capacity they may be placed in. *Morison* v. *Glover*, ... "The only point that ... in dispute between the ... aning of the ... to be the subject of matter of arbitration, or *of an action. It was contended on the part* ... on arose between the society and its members ... ...It appears to us, therefore, the words "matter in dispute" must be read "matter in difference between the society and the members as members, and not in any other capacity."

Miscellaneous.

Recovery of sums due to Government.

44. (1) All sums due from a registered society or from an officer or member or past member of a registered society as such to the Government, including any costs awarded *to the Government under section 37, may be* recovered in the same manner as arrears of land revenue

(2) Sums due from a registered society to Government and recoverable under sub section (1) may be recovered, firstly, from the property of the society ; secondly, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability ; and, thirdly, in the case of other societies, from the members.

Notes—Agriculturist's house is not exempt from sale for debts due to the society. 1927 Nag. 217.

Power to exempt societies from conditions as to registration.

45. Notwithstanding anything contained in this Act, the Local Government may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration.

Notes—The existing section 29 has been recast with a view to making clear the distinction in the power of exemption of the Local Government before and after registration—*Statement of Objects and Reasons.*

Power to exempt registered societies from provisions of the Act.

46. The Local Government may, by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

Post Office.

47. (1) No person other than a registered society shall trade or carry on business under any name or title of which the word "co-operative" is part without the sanction of the Local Government:

Prohibition of the use of the word "co-operative".

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation.

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to fifty rupees, and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor.

Notes.—The use of the name of "co operative" is prohibited by this section.

Indian Companies Act, 1882, not to apply.

48. The provisions of the Indian Companies Act, 1882,* shall not apply to registered societies.

Saving of existing societies

49. Every society now existing which has been registered under the Co-operative Credit Societies Act, 1904, † shall be deemed to be registered under this Act, and its by laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

Notes.—A by-law under which the heir and successor in interest, who is elected a member of the society is given the rights and subjected to the liabilities of a deceased is not *ultra vires* and a person so elected is bound to pay the debts of the deceased though it may exceed the assets left by him. 31 Ind. Cas. 724=18 O. C. 157.

50. [*Repeals—Repealed by Act* (XVII *of 1914*).]

THE INDIAN COPYRIGHT ACT, 1914.

ACT NO. III OF 1914.

RECEIVED THE G. G's ASSENT ON THE 24TH FEBRUARY, 1914.

An Act to modify and add to the provisions of the Copyright Act, 1911.

WHEREAS it is expedient to modify and add to the provisions of the Copyright Act, 1911,‡ in its application to British India; It is hereby enacted as follows:—

Notes—"The question of the amendment of the Indian Copyright Act (XX of 1847) has been considered on several occasions since 1864 on the ground that the Act was incomplete and did not provide among other matters for the prohibition of copyright in photographs, translations, newspapers, telegrams, etc. Legislation, however, has been postponed in view of possibility of an amendment of the English Acts on the subject of Copyright. In 1908 a conference and convention, to which [illegible] ith the object of bringing the do- [illegible] with one another so as to obtain [illegible] ation of that convention involved [illegible] s were examined by a strong departmental committee appointed by the Board of Trade which came to the unanimous [illegible] oted by Great Britain with as [illegible] convened in 1910 containing representatives of the self-governing dominions and of the India office. Colonial

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* Act VI of 1882. See now Act VII of 1913 by which the former Act has been repealed.

† Act X of 1904.

‡ 1 & II Geo. 5, c. 46.

office, etc. It endorsed the recommendation of the Board of Trade Committee and recommended that an Act dealing with the essentials of Imperial Copyright law should be passed by the Imperial Parliament and that this Act should be expressed to extend to all British possessions subject to the rights of self-governing dominions

[illegible] .o its provisions by legislation in certain cases

[illegible] conference and eventually passed into law as [illegible] ·6), which came into operation in the

[illegible]

[illegible] registration of copyright.

(ii) The extension of the term of copyright from 42 years to one of life and 50 years subject to certain conditions.

(iii) The extension of the scope of copyright.

(iv) The substitution of one Act for several on the subject of copyright.

[illegible]

in and the addition to the Act which are considered desirable, together with certain formal and necessary alterations due to difference between English and Indian administration and procedure.

[illegible] anges proposed are as few as possible in view [illegible] t uniformity throughout the Empire which was [illegible] Conference of 1910"—*Statement of Objects and Reasons.*

CHAPTER I.

PRELIMINARY.

Short title and extent.

1. (1) This Act may be called the Indian Copyright Act, 1914.

(2) It extends to the whole of British India including British Beluchistan, the District of Angul and the Sonthal Parganas.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "the Copyright Act" means the Act of Parliament entitled the Copyright Act, 1911,* and

(2) words and expressions defined in the Copyright Act have the same meanings as in that Act.

CHAPTER II

CONSTRUCTION AND MODIFICATION OF THE COPYRIGHT ACT.

Application of Copyright Act to British India with adaptations.

3. In the application to British India of the Copyright Act (a copy of which Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, is set out in the First Schedule), the following modifications shall be made, namely :—

(1) the powers of the Board of Trade under section 3 shall, in the case of works first published in British India, be exercised by the Governor General in Council ;

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* 1 & 2, Geo. 5. C. 46.

(2) the powers of the Board of Trade under section 19 shall, as regards records, perforated rolls and other contrivances, the original plate of which was made in British India, be exercised by the Governor General in Council; and the confirmation of Parliament shall not be necessary to the exercise of any of these powers;

(3) the references in section 19, sub-section (4), and in section 24, sub-section (1), to arbitration shall be read as references to arbitration in accordance with the law for the time being in force in that part of British India in which the dispute occurs;

(4) as regards works the authors whereof were at the time of the making of the works resident in British India, and as regards works first published in British India, the reference in section 22 to the Patents and Designs Act, 1907,* shall be construed as a reference to the Indian Patents and Designs Act, 1911,† and the reference in the said section to section 86 of the Patents and Designs Act, 1907,* shall be construed as a reference to section 77 of the Indian Patents and Designs Act, 1911;†

(5) as regards works first published in British India, the reference in section 24, sub-section (1), proviso (*a*), to the *London Gazette* and two London newspapers shall be construed as a reference to the *Gazette of India* and two newspapers published in British India; and the reference in proviso (*b*) of the same sub-section of the same section to the 26th day of July, 1910, shall, as regards works the authors whereof were at the time of the making of the works resident in British India, and as regards works first published in British India, be construed as a reference to the 30th day of October, 1912.

Notes.—This contains purely formal modifications necessary for the application of the Act of 1911 to British India—*Statement of Objects and Reasons* In England before the statue of Anne [8 Anne c 19] there was no copyright at common law for an author, or a publisher in his published work. 44 B 720. The preamble runs an follows: "Printers, book-sellers and other persons were frequently in the habit of printing, reprinting, and publishing books and other writings without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families. For preventing, therefore, of such practices for the future and for the encouragement of learned men to compose and write useful books, it is enacted that the author of any book or books already printed who have not transferred to any other the copy or copies of such book or books in order to print or reprint the same shall have the sole right and liberty of printing such book or books for the term of one and twenty years, and that the author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee, or assignees shall have the sole liberty of printing or reprinting such book or books for a term of fourteen years, to commence from the day of first publishing the same and no longer." It further provides that "after the expiration of the said term of fourteen years the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, or their representatives, for another term of fourteen years". For infringement of copyright forfeiture of illicit copies could be ordered and a fine was imposed. This Act was to have effect from the 10th April 1910

The effect of the statute was to extinguish the common law copyright in published works; though leaving the common law copyright in unpublished works unaffected *Donaldson* v. *Beckett*, 4 Burr. 2408; *Beckford* v *Hood*, (1798) 7 T. R 620; *Jeffreys* v. *Bossey*, (1854) 4 H. L. C. 815 By 54 Geo 3, c 156 the period was extended to 28 years to commence from the day of the first publication of the same; and if he survives that period, then for the residue of his natural life. Finally in 1842, the [illegible] extended to the [illegible] wo years, which [illegible] amed in accord- [illegible] own to have subsisted when Act III of 1914 came into force, the period of copyright substituted by that Act would be 50 years from the death of the author. When a complaint for

* 7 Edw. VII, c 29 † II of 1911.

infringement is made after the new Act the question to be considered is whether the copyright is subsisting under the new Act and not whether it was subsisting under the old Act. A. I. R. 1931 All 353=1931 A. L. J. 304=32 Cr L. J. 814=131 Ind. Cas.

called
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protection of the law. It has, nevertheless, been a matter of frequent controversy

the first Copyright Act. (8 Anne. c. 19); and (3) that although the author of any literary composition, and his assignees, had the sole right of printing and publishing the same in perpetuity by the common law, yet that right became merged in the

the common law rights in unpublished
copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of the Act, or of any other statutory enactment for the time being in force."

Modification of copyright as regards translation of works first published in British India.

4. (1) In the case of works first published in British India, copyright shall be subject to this limitation that the sole right to produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work:

Provided that if within the said period the author, or any person to whom he has granted permission so to do, publishes a translation of any such work in any lang
reproduce,
to the limit

(2) For the purposes of sub-section (1) the expression "author" includes the legal representative of a deceased author.

Notes—Under sections 1-3 of the Act of 1911 the term for which copyrights subsist in translations is the life of the author and a period of fifty years after his death. The special linguistic conditions of India are so numerous and differs so widely that the conditions which prevail cannot be compared with those in most European countries and vernacular translations from English and from one vernacular to another are not only common but serve the useful purpose for disseminating knowledge. It is proposed, therefore, that translations of works first published in British India should be permitted after the expiry of five years from the date of first publication, provided that two year's notice of the intention to publish a translation has been given to the author. This proposal is considered to be a sufficient safeguard of and a reasonable compromise between rights of the author and those of the public. *Statement of Objects and Reasons.*

Musical works made by resident of, or first published in, British India.

5. In the application of the Copyright Act to musical works the authors whereof were at the time of the making of the works resident in British India, or to musical works first published in British India, the term "musical work" shall, save as otherwise expressly provided by the Copyright Act, mean "any combination of melody and harmony, or either of them, which has been reduced to writing"

the Act of 1911 are new, and in view
objections have been urged against the
orks. It is pointed out that it is impossi-
original composer or author and the majority of
written in staff notation except through the me-
subject to infinite variety of notation and time.
If, under these circumstances, section 19 is adopted with its retrospective principle there may be fictitious claims of ownership in musical works and much confusion and undesirable litigation. To make it clear that in order to fall within the definition of "musical work" music must have been graphically represented it is proposed to
"musical work" contained in the
cal work" means any combination
...d, or reduced to writing."—*Statement of Objects and Reasons*

6. (1) Copies made out of British India of any work in which copyright subsists which if made in British India would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Chief Customs officer, as defined in the Sea Customs Act, 1878,* that he is desirous that such copies should not be imported into British India, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be prohibited imports within the meaning of section 18 of the Sea Customs Act, 1878.*

Importation of copies.

(2) Before detaining any such copies, or taking any further proceedings with a view to the confiscation thereof, such Chief Customs officer, or any other officer appointed by "the Chief Customs authority"† in this behalf, may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself, in accordance with these regulations, that the copies are such as are prohibited by this section to be imported.

(3) The Governor General in Council may, by notification in the *Gazette of India*, make regulations, either general or special, respecting the detention and confiscation of copies the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and confiscation; and may, by such regulations, determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Such regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works

(5) The regulations may provide for the informant reimbursing the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention, and may provide that notices given under the Copyright Act to the Commissioners of Customs and Excise of the United Kingdom, and communicated by that authority to any authority in British India, shall be deemed to have been given by the owner to the said Chief Customs officer

(6) This section shall have effect as the necessary modification of section 14 of the Copyright Act.

Notes—Section 18 (a) of the Sea Customs Act 1878 prohibits importation in
In view of the
rence in proce-
ovisions as the

* VIII of 1878
† The words within quotations have been substituted by Act 4 of 1924.

CHAPTER III.

PENALTIES.

Offences in respect of infringing copies.

7. If any person knowingly—

(*a*) makes for sale or hire any infringing copy of a work in which copyright subsists ; or

(*b*) sells or lets for hire, or by way of trade exposes or offers for sale or hire, any infringing copy of any such work ; or

(*c*) distributes infringing copies of any such work, either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright ; or

(*d*) by way of trade exhibits in public any infringing copy of any such work ; or

(*e*) imports for sale or hire into British India any infringing copy of any such work ;

he shall be punishable with fine which may extend to twenty rupees for every copy dealt with in contravention of this section, but not exceeding five hundred rupees in respect of the same transaction.

Penalties.—"We have substituted the word penalties, for the words 'summary remedies' in the title of Chapter III in view of the fact that the expression summary trial is used in the Code of Criminal Procedure, 1898, to denote a particular procedure in the trial of cases, which might not be applicable to cases under this Chapter."—*Report of the Select Committee* The particular clause under which a person has been summoned should be mentioned. A. I. R. 1934 Pat. 522=52 Ind. Cas. 248.

Sections 7-12—"The provisions of section 11 of the Act of 1911 have been in the main adopted. Imprisonment, however, will in all cases be simple, and offences will be triable by a Magistrate of the first class only It is proposed to convert the amount of English fines on the basis of £ 1=Rs 10 in accordance with the usual practice and to insert a clause exempting the case of infringement by the construction of a building from the operation of summary remedies, thus giving effect to the similar exemption provided by section 9 of the English Act."—*Statement of Objects and Reasons.* Where a book is printed at Lahore, only the Lahore Court has jurisdiction under s. 177 Cr. P. Code to enquire into and try the cases against the printer. The offence under this section is complete as soon as the book infringing the copyright is printed and it does not depend for its completion upon the ensuing of any consequence such as is mentioned in s. 174 of the Cr. Pro. Code. 28 P. R. 1916 Cr.

Who may be convicted—A person who has in his possession any plate for the purpose of infringing copies will be convicted. Copinger p. 183 ; see also *R. v. Bladoi, Times. November 27, 1913 cited in ibid.* When two or more persons conspire to infringe a copyright, both of them may be convicted. *R.* v. *Willets,* (1906) 7 J. I. P. 127. The question whether there has been an infringement depends on whether a colourable imitation has been made. Whether a work is a colurable imitation of another is a question of fact. 5 C. L J. 243=34 C. W. N. 540. A copy comes so near the original as to suggest the original to the spectator. In the case of pictures it is enough if in the offending pictures, the main figures have an identical form, 112 Ind. Cas. 784=33 C. W. N. 179.

Registration—Where the action in respect of infringement of copyright was commenced when the Act of 1914 was in force, the non-registration of the copyright does not effect dismissal of the action. *Venkata Rao* v. *Padmanava,* 1927 Mad. 981 ; *Gonbund* v. *Wallace,* (1877) 36 L T. 704 ; *E W. Savory* v. *World of Gold Ltd.* (1914) 2 Ch. 566. Where the offence alleged to have been committed by the accused was one under s 7, Copyright Act (1914) and trial Court took a wrong view of the law and acquitted the accused. *Held,* that in a case when the Court has proceeded on a wrong view of the law, and when the matter is of great importance to the complainant in his position as author of the book, which will be pirated by another who will secure for himself the gains that ought legitimately to go to the petitioner a retrial should be ordered. A. I. R. 1927 Mad 281.

8. If any person knowingly makes, or has in his possession, anyplate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be punishable with fine which may extend to five hundred rupees.

Possession of plates for purpose of making infringing copies.

9. If any person, after having been previously convicted of an offence punishable under section 7 or section 8, is subsequently convicted of an offence punishable under either of these sections, he shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Punishment on second conviction.

10. (1) The Court before which any offence under this Chapter is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the Court may think fit.

Power of Court to dispose of infringing copies or plates for purpose of making infringing copies.

11. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

Cognizance of offences.

12. The provisions of this Chapter shall not apply to any case to which section 9 of the Copyright Act, regarding the restrictions on remedies in the case of a work of architecture, applies.

Saving in case of infringement by construction of building.

CHAPTER IV.

MISCELLANEOUS.

13. Every suit or other civil proceeding regarding infringement of copyright shall be instituted and tried in the High Court or the Court of the District Judge.

Courts having civil jurisdiction regarding infringement of copyright.

Notes.—On account of the technicalities of the subject of copyright and of the greater finality that such a tribunal will afford it has been considered advisable to give jurisdiction to High Courts only in all suits or civil proceedings regarding infringement of copyright.—*Statement of Objects and Reasons.*

14. No suit or other civil proceeding instituted after the 30th of October, 1912, regarding infringement of copyright in any book the author whereof was at the time of making the book resident in British India, or of any book first published in British India, shall be dismissed by reason only that the registration of such book had not been effected in accordance with the provisions of the Indian Copyripht Act, 1847.*

Effect of non-registration under Act XX of 1847.

* XX of 1847.

Notes —This clause which is self-explanatory has been added in view of a recent decision in *Evans* v. *Morris* reported in the Law Journal of March 29th, 1913—*Statement of Objects and Reasons.* Where the action commenced when Act of 1914 was in force non registration of the copyright does not effect the dismissing of the action. A. I. R. 1927 Mad 981=53 M. L. J. 529.

15. [*Repeals*] *Repealed by Act XII* of 1927.

THE FIRST SCHEDULE.

PORTIONS OF THE COPYRIGHT ACT APPLICABLE TO BRITISH INDIA.

(*See section 3.*)

COPYRIGHT ACT, 1911.

[1 & 2 Geo. 5, Ch. 46.]

ARRANGEMENT OF SECTIONS.

PART I.

IMPERIAL COPYRIGHT.

Rights.

SECTIONS.

1. Copyright.
2. Infringement of copyright
3. Term of copyright
4. Compulsory licences.
5. Ownership of copyright, etc.

Civil Remedies.

6. Civil remedies for infringement of copyright.
7. Rights of owner against persons possessing or dealing with infringing copies, etc.
8. Exemption of innocent infringer from liability to pay damages, etc.
9. Restriction on remedies in the case of architecture
10. Limitation of actions.

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Importation of Copies.

14. Importation of copies

Delivery of Books to Libraries.

15. Delivery of copies to British Museum and other libraries.

Special Provisions as to certain Works.

16. Works of joint authors.
17. Posthumous works.
18. Provisions as to Government publications.
19. Provisions as to mechanical instruments
20. Provisions as to political speeches.
21. Provisions as to photographs.

SECTIONS.

22 Provisions as to designs registrable under 7 Edw. VII, c. 29.

24. Existing works.

Application to British Possessions.

25. Application of Act to British dominions
26 Legislative powers of self-governing dominions.
27 Power of Legislatures of British possessions to pass supplemental legislation.
28. Application to protectorates.

PART II.

INTERNATIONAL COPYRIGHT.

29. *Power to extend Act to foreign works.*
30 Application of Part II to British possessions.

PART III.

SUPPLEMENTAL PROVISIONS.

31. Abrogation of common law rights.
32.
33
34. [illegible] libraries.
35. Interpretation.
36. Repeal.
37. Short title and commencement.

SCHEDULES.

COPYRIGHT ACT, 1911.

I & 2 Geo. V. Chapter 46.

An Act to amend and consolidate the Law relating to Copyyright

[16TH DECEMBER, 1911.]

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

IMPERIAL COPYRIGHT.

Rights.

Copyright.

1. (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary, dramatic, musical and artistic work, if—

(*a*) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid ; and

(*b*) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid ;

but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self governing dominions to which this Act does not extend and to foreign countries.

(2) For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public ; if the work is unpublished, to publish the work or any substantial part thereof ; and shall include the sole right—

(*a*) to produce, reproduce, perform, or publish any translation of the work ;

(*b*) in the case of a dramatic work, to convert it into a novel or other non-dramatic work ;

(*c*) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise ;

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rivance by means of
;

(3) For the purposes of this Act, publication, in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works.

Original.—According to this section the work must be original. So far as the copyright in a reported speech is concerned, a reporter has no copyright in the speech of a person but he has such right in the reports of those speeches. *Walter* v. *Lane*, (1900) A. C. 539 on appeal from (1899) 2 Ch. 749 In the same case, *Lord Chancellor* said that copyright "is given by the statute to the first producer of a book whether that book be wise or foolish, accurate or inaccurate, of literary merit or,

no merit whatever." In *University of London Press* v. *University Tutorial Press,* (1916) 2 Ch. 601, *Peterson J.* said : "The word 'original' does not in this connection mean that the work must be an expression of original or inventive thought. Copyright Acts are not concerned with the originality of ideas but with the expression of thought, and in the case of literary work, with the expression of the thought in print or writing. The originality which is required relates to the expression of the thought. But the Act does not require that the work must not be copied from another work—that it should originate from the author." Originality relates to the expression of thought. The work must not be copied from another work. 48 B. 309=28 C. W. N. 613=40 T. L. R. 186 (P. C) The word "original" should

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original work. 23 Bom. L.

infringes copyright. *Cary*

v. *Faden,* (1799) 5 Ves. 24.

Walter v. *Lane,* (1900) A.

Lestne v. *young,* (1894) A. C

Copinger p. 47 ; see also *V*

(1868) L. R. 7 Eq 34 ; *Lamb* v. *Evans,* (1893) 1 Ch. 218, But in *Macmillan* v. *Cooper,* 28 C. W. N. 613, copyright was denied in a case where slight alterations were made in an old non-copyrighted text.

In *Frederick Emerson* v *Chas. Davis*, 3 Story U. S. Rep. 768, the plaintiff had compiled and published a book entitled, *"The North American Arithmetic,"*

sold by the defendants, was composed by themselves, and that neither it nor any part of it was copied, adopted or taken from the plaintiff's book or any part thereof. At p. 778 of the report the learned Judge expressed himself thus : "The book of the plaintiff is, in my judgment, new and original in the sense in which those words are to be understood in cases of copyright. The question is not whether the materials which are used are entirely new and have never been used before, or even that they have never been used before for the same purpose. The true question

they are combined in a different manner from what was in use before......................

does not thereby acquire the right

ere common to all persons before,

such materials but then they have no right to use such materials with its improvements superadded, whether they consist in plan, arrangement, or illustrations or combinations, for these are strictly his own......In truth, in literature, in science and in art there are and can be few, if any, things which, in an abstract sense, are strictly new and original throughout.

In the case of *Macmillan* v. *Suresh Chandra Deb,* 17 Cal. 951, the question was whether copyright can exist in a selection. In that case *Sir Arthur Wilson* said at p. 961 : "In the case of work not original in the proper sense of the term, but composed or complied or prepared from materials open to all, the fact that one man has produced such a work does not take away from any one else the right to produce another work of the same kind, and in doing so to use all the materials open to him. But, as the law is concisely stated by *Hall, V. C.* in *Hogg* v. *Scott,* L. R. 18 Eq. 444

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the same selection but that must be by resorting to the original authors, not by

taking advantage of the selection already made by another" This passage was approved of by *Lord Hatherly* in *Spires v. Brown*, 6 W R. (Eng.) 852 ; see also *Maffat and Paige* v. *Gill*, (1902) 84 L. T. 456 on appeal 86 L. T. 465.

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facts of that case, and
Lord Atkinson in 28 C.
W. N. 613 at p. 623 P. C.

(1870), which dealt with the alleged
ed "Minstrelsy of the Scottish Border",
protected by copyright but a new
were added, *Lord Kinloch*, in deli-

over and above that belonging to the text. This value may perhaps be rightly expressed by saying that the book will procure purchasers in the market on special accounts of these notes. When notes to this extent and this value are added I can not doubt that they attach to the edition the privilege of copyright. The principle of the law of copyright directly applies. There is involved in such annotation and

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ame as in the
ingement.

In *J. Arnold* v. *Houlston*, the plaintiffs were the publishers of a book written by *Dr. Brewer* called the "Guide to Science". The Vice-Chancellor S. W. Pagewood, having fully ascertained the object with which this book was compiled and published and the sources from which Dr. Brewar obtained the information
in the following passage
He said : 'If any one
a systematic course of
ons asking in reference
iestions and explanations
of those phenomena whether such explanations and answers were furnished by his own recollection of his former general reading or out of works consulted by him for the express purpose, the reduction of the questions so collected with such
form, is amply sufficient to con-
rotected Therefore I have no
now in question is in that sense
yright exists in an alphabetical
list of railway stations as contained in "*Bradshaw's* Railway Guide". *Blacklock* v. *Arthur Pearsons*, (1915) 2 Ch 377 , *Cf* also, *Wyatt* v *Barnard*, 3 V. & B. 77 ; *Kenric* v. *Danube Collieries*, (1891) 3 O. W. R 473 , *Trade Auxiliary* v. *Middlesborugh*, 40 Ch. D. 425 ; *Cate* v *Decon*, 40 Ch. D. 500 ; *Cox* v. *Auxiliary Land and Water*, L. R. 9 Ex. 324 ; *Exchange Telegraph* v. *Gregory*, (1896) 1 Q. B 147 ; *Nisbet* v *Golf Agency*, (1907), 23 T L. R. 370 ; *Weatherby* v *International*, (1910) 2 Ch 297 ; *Leslie* v. *Young*, (1894) A. C 335.

Literary.—The work must not only be original ; it must be a "literary work."
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copyright. *Uni-*
, (1916) 2 Ch. 601.
iterary finish, but,

is used to indicate written or printed matter. *Ibid.* So copyright exits in a telegraphic code [*Anderson* v. *Lieber Co.*, (1917) 2 K. B. 469 ; *Ager* v. *P. & O. S. N. Co*, 26 Ch. D. 635 ; *Ager* v. *Collingridge*, 2 T. L. R. 219] ; or in catalogue of types (*Masson* v. *Embosotype*, 41 R. P. C. 160) ; or in a system of shorthand (*Pitman* v. *Hine*, 1 T. L R 39) ; or in newspaper telegrams [*Water* v. *Steinkoff*, (1892) 3 Ch. 489 ; *Exchange Telegram Co.* v. *Central News*, (1897) 2 Ch. 48]—Copinger, p. 50. A tradesman's catalogue is a proper subject of copyright. *Hotten* v. *Arther*, (1863) 1 H & M. 603 ; *Grace* v. *Newman*, (1875) L. R. 19 Eq. 623 ; 21 Ch. D. 369 ; (1906) 2 Ch. 491 ; (1893) 1 Ch. 218 ; *Collis* v. *Cater*, (1898) 78 L. T. 613 ; *Kelly* v. *Morris*, (1866) L. R. 1 Eq. 697 ; *Morris* v. *Ashbee*, (1868) L. R 7 Eq. 34.

Abridgement —In an abridgement the idea must be preserved and expressed in author's own language. A book in which certain passages are copied and others are omitted is not an abridgement. In order to constitute an original literary work some skill must be manifested in arranging the selection. In order to constitute copyright, labour, skill or capital must be spent. A new or original plan, arrangement or construction of material will entitle the author to copyright therein whether the materials themselves be old or new. It will not create a copyright in a new edition of a work of which the copyright has expired merely to make a few amendations of the text or to add a few important notes. To create a copyright by alterations of the text these must be extensive and substantial practically making a new book 48 B. 308=28 C. W. N. 613 P. C ; see also *Black* v. *Murray*, 9 Sc. Sess. Cas 3rd Ser 341 ; *Hedderwick* v *Griffin*, 3 Sc. Sess Cas. 2nd Ser. 383 ; *Thomas* v. *Tuner*, (1886) 33 Ch. D. 292 ; *Blacklock* v *Pearson*, (1915) 2 Ch. 576.

Compilation —A copyright may exist in a compilation. 43 A. 412=61 Ind. Cas. 394=19 A L. J. 180.

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v. *Benning*, 16 C. B. 491 ; *D'Almaine* v. *Bossy*, (1835) 1 Y & C. 228.

Performance.—Reproduction of songs in wireless is performance. (1934) 1 Ch. 121=150 L. T. 119. Performance at residential hotel by an orchestral trio, is performance in public. (1933) 1 Ch. 855=149 L. T. 425=102 L. J. Ch. 330.

Fair use.—*Vide* (1934) 1 Ch. 593=103 L. J Ch. 281.

Translation —Copyright may exist in the translation of a work. *Byrne* v. *Statist Co.*, (1914) 1 K. B 622. The author of a book is entitled to copyright in a translation of it, as if it were an original work. 13 A. L. J. 636.

Title of a book —The title of a book is not a subject-matter of copyright. *Licensed Victualler's News Paper Co.* v. *Bringham*, 38 Ch. D. 139.

Unpublished Work.—An assignee of an unpublished literary work acquires copyright in it. 39 M. L. J. 341=59 Ind. Cas. 229=12 L. W. 151=(1920) M. W. N. 426.

Libellous, immoral or obscene Work —A copyright in a libellous, immoral or obscene work will not be enforced. Copinger p. 59 citing *Stock-dale* v. *Onwhyn*, (1826), 5 B & C. 173 ; *Hume* v. *Dale*, (1803) cited 2 Camp. 28 ; *Walkot* v. *Walker*, (1802) 7 Ves. 1 ; *Poplett* v. *Stockdale*, (1825) 1 Ryam & M. 347 ; *Gee* v. *Pichard*, (1818) 2 Swans, 413 ; *Southey* v. *Sherwood*, (1817) 2 Mer. 435 ; *Murray* v. *Benbond*, (1822) 1 Jac. 474 ; *Lawrence* v. *Smith*, 1 Jac. 471 ; *Fores* v *Johnes*, (1802) 4 Esp. 97; *Gale* v. *Leckie*, (1817) 2 Stark, N. P. C. 107 ; *Baschet* v. *London Illustrated*, (1900) 1 Ch. 73 ; *Glyn* v. *Western Features Film Co*, (1916) 1 Ch. 261.

Original Dramatic Work —In *Tate* v. *Fulbrook*, (1908) 1 K. B. 831, it was held that a dramatic work was not entitled to be protected against piracy by public performance unless it was capable of being printed and published. The actual decision in *Tate* v. *Fulbrook*, to the effect that mere scenic effects are not the subject of protection has been approved under the Act of 1911—Copinger, p. 68 citing *Tate* v. *Thomas*, (1921) 1 Ch. 503.

Musical Work.—A musical work may also be a dramatic work. *Russell* v. *Smith*, (1848) 12 Q. B. 217 ; *Clerk* v. *Bishop*, 25 L. T. 908 ; *Roberts* v. *Bignal*, 3 T. L. R. 552 ; but see *Fuller* v. *Blackpool Winter Gardens*, (1895) 2 Q. B. 429.

Artistic Work.—This Act includes, among artistic works, works of painting, drawing, sculpture, and architectural works of art and engravings and photographs. *Vide* section 35 (1); see also *Grave's Case.* (1869) L. R. 4 Q. B. 715. But an artist has no monopoly in the subject. *De Berenger* v. *Weheble,* (1819) 2 Stark N. P. 548; *Grave's Case* (1869) L. R. 4 Q. B. 723.

what is meant by ... such as painting or a statute, and it seems to me that a photograph taken from a

Published.—A place of publication is a place where copies are received by the public either for price or gratuitously. *Mc Farlane* v. *Hulton,* (1890) 1 Ch. 884; *Britain* v. *Kennedy,* (1902) T L R 122, *Nowells* v. *Sudlow,* (1852) 12 C B. 177; *Blanchett* v *Ingram,* (1887) 3 T L. R 687; *Alexander* v. *Mackenzie,* 9 Sess Cas. 2nd series 748. Copies of work issued for private circulation are not published *Prince Albert* v. *Strange,* (1849) 2 De G & Sm. 652; *Kenrich* v. *Danube Collieries.* (1891) 39 W R. 473; *Caird* v. *Sime,* 12 App. Cas 326. The publication of a story in parts in magazine has been held to be equivalent to publication in book form. *Holmes* v *Hurst,* (1898) 174 U S. Rep. 28; *Miffin* v. *Dutton,* (1901) 107 Fed. Rep. 708; *Muffin* v. *White,* (1902) 112 Fed. Rep. 1004 In the case of artistic work or design, such a work is published when it is publicly exhibited for sale. *Blank* v. ... *tain* v. *Hanks Bros,* (1902) 18 T. L. R. 525; ... *But the exhibition of a picture in public for* ... for engravings of the work is not publication. *Turner* v. *Robinson,* 19 Ir Ch. Rep. 510; *Britain* v. *Kenedy.* (1902) 19 T. L. R. 122. —Oldfield, The Law of Copyright, p 46.

2. (1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright: Provided that the following acts shall not constitute an infringement of copyright:—

Infringement of copyright.

(i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary:

(ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work:

(iii) The making or publishing of paintings, drawings, engravings, or photographs, of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or buildings, or the making or publishing of paintings, drawings, engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art:

(iv) The publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists: Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged:

(v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries:

(vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

(*a*) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or

(*b*) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(*c*) by way of trade exhibits in public; or

(*d*) imports for sale or hire into any part of His Majesty's dominions to which this Act extends,

any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of his His Majesty's dominions in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place.

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performace would be an infringement of copyright.

Any person.—This term includes company. *Marzials* v. *Gibbons*, (1874) L. R. 9. Ch. 518; *McLean* v. *Mody*, 20 Sess. Cas. 1154.

Consent.—No written consent is necessary. Consent may be presumed from circumstances. *Coper* v. *Stephens*, (1895) 1 Ch. 567; *Dumison* v. *Ashdown*, (1897) 13 T. L. R. 226; *Bourcus* v. *Cooke*, (1903) 2 K. B 227, 236. A licensee can sue for infringement. *British Film Actors* v. *Glover*, (1918) 1 K. B. 299.

l cases, the such only, ; but cases frequently arise in which, though there is some injury, yet equity will not interfere by injunction to prevent the further use, as where the amount copied is small and of little value, if there is no proof of bad motive, or where there is a well founded doubt as to the legel title, or where there has been long acquiescence in the infringement, or culpable laches and negligence in seeking redress, especially if it appear that the delay has misled the respondent" *Lawrence* v. *Dona*, 4 Cliff. 1. Quotations reasonable in quantity, number and length is fair if within resonable limits. *Sampson* v. *Seaver Radford*, 140 Fed. 539; *Chatterton* v. *Cave*, 3 A. C. 483.

Infringement of copyright.—In an action for an injunction and damages for an infringement of plaintiff's copyright, if it be found that even inaccuracies in both the work are indential, that references of significance in plaintiff's work are reproduced in defendant's work, but by reason of absence of other matter, have no significance therein and three is identity not merely of information but of language, that leaves no doubt that the work of the defendant is a copy of the plaintiff's in a very high degree. 67 Ind. Cas. 983. In an action for breach of copyright, intrinsic evidence to be derived from comparison of two works must be of most cogent force. 142 Ind. Cas. 815=64 M. L. J. 193=1933 A. L. J. 393=A. I. R. 1933 P. 26 (P. C.).

Proviso allows only two passages from works of another and not from each work of such another. 1933 A. L. J. 791=A. I. R. 1933. All. 474. Copyright is infringed by

the labour, skill and capital of the ...

Ignorance in no excuse for infringement. (1908) 2 Ch. 441; (1847) C. B. 871; (1884) 27 Ch. D. 260; (1914) 1 K. B. 622. A person is liable for infringement of

copyright made by his servant in the course of his employment. (1924) 1 K. B. 762 ; (1885) 2 T. L. R. 685.

Copyright in a literary work ... By reprinting the whole work *verbatim* ... (3) By imitating the whole or a part ... colourable alteration. (4) By reproducing the whole or a part under an abridged form. (5) By reproducing the whole or a part under the form of a translation. (6) By converting it into a dramatic work. (7) By making mechanical contrivances whereby it may be reproduced. (8) By performing it in public (9) By dealing with copies made or imported in contravention of the Act—Copinger, p. 118.

Term of copyright.

3. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death :

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act, thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work , and, for the purposes of this proviso, the Board of Trade may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices and the mode, time, and frequency of the payment of royalties, including (if they think, fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

Notes.—"The proper period of copyright has long been a matter of controversy. Some have contended that the period ought, in the interests of literature, to be a very short one ; others urge in the same interest, that it ought to be perpetual. Those who argue in favour of a restricted period of copyright speaks of it as a monopoly ... of the author's right to prevent ... f property............It is sometimes ... militates against cheap literature, ... is sound."—Copinger on Copyright, ... at Berlin in the year 1907 for the purpose of considering what modifications ought to be made in the Berne convention, it was decided that the minimum protection accorded to an author should be during his life and for a period of fifty years after his death.

This appears to be a reasonable period, and it has now been adopted by the *British Copyright Act 1911, for all works, with certain minor exceptions.* The present law has, moreover, the very considerable advantage over the old law, that the date of publication has—save in the excepted cases, which will be dealt with later on—no bearing upon the determination of copyright protection. Under the law, which gave an alternative period of copyright for literary works, either for the life of the author and seven years after his death or a gross period of forty-two years, which should be the longer, the works of the author were liable to fall into the public domain at different times; but under the new Act all the works of the same author will—save in the excepted cases—fall into the public domain at one and the same ... as if the author died at the ... livered in public. There is ... photographs and mechanical contrivances and it is submitted that these cannot be compulsorily reproduced upon a royalty basis " Copinger, p. 88

Compulsory licences

4. If, at any time after the death of the author of a literary, dramatic or musical work which has been published or performed in public, a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work, and that by reason of such refusal

deration of a sum of money paid to him agrees that certain persons shall have the sole power of printing, reprinting and publishing a certain work for all time, that would be parting with the copyright." *Per Wood V. C.* in *Stevens* v. *Benning*, 1 K. & J. 168.

Civil Remedies.

Civil remedies for infringement of copyright.

6. (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or as the case may be, the title of the plaintiff, and where any such question is in issue, then—

(*a*) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work;

(*b*) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

Notes.—The "owner of the copyright" is either the original owner or a person . . . . ıere the right of the plaintiffs is equitable only . . . legal owner. *Performing Right Society Ltd.* v. . . . 4, A. C. 1; see also *University of London Press* v. *University Tutorial Press*, (1916) 2 Ch. 601; *Bowdens* v. *Herbert*, (1904) 2 Ch. 86. Special damage need not be proved. *Exchange Telegraph* v. *Gregory*, (1896) 1 Q. B. 147. A licensee without joining the owner cannot sue. *Nelson* v. *Hornman*, (1909) 25 T. L R. 685; see also *Nicol* v. *Stockdale*, 3 Swan 687; *Petty* v. *Taylor*, (1897) 1 Ch 467. The infringed copies must be delivered to the owner. *Mansell* v. *Valley Printing Co*, (1908) 1 Ch. 567. An application for injunction must be made without any delay. *Mawman* v. *Tegg*, 2 Russ 385; *Baily* v. *Taylor*, Russ. & My. 73; *Southey* v. *Sherwood*, 2 Mer. 435: *Lewis* v. *Chapman*, 3 Beav. 132; *Pilman* v. *Hime*, 1 T. L. R 39. As to method of accounting. *vide Colburn* v. *Simms*, 2 Ha. 543, 560 Where the defendants in an action for damages for infringement of copyright in respect of work do not put in issue the existence of the copyright in the work, thre is an irrebutable presumption, that the alleged work is a work in which . . . In this class of cases . . . o decide the question . . . 39 C. L. J. 134 Under . . . 126 Ind Cas. 197=34 C. W. N. 540=57 C. L. J. 243=A I. R. 1931 Cal. 233. In case of infringement of copyright grant of injunction is adequate relief. A I. R. 1931 Lah. 624=132 Ind. Cas. 586. Where book contains selections from works of another, there is *prima facie* case for issue of temporary injunction. A I. R. 1935 Lah. 282.

Rights of owner against persons possessing or dealing with infringing copies, etc.

7. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accord-

ingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

copies including colourable imitation made -ovisions of this Act. It is to be observed that ..tion can only be taken when the whole work of any substantial part thereof is reproduced—when only a few passages were re- . not pass. This is in substantial ac- 24 Ir. C. L. R. at p. 171, where maintain that under the 23rd section the proprietor of copyright in a book would acquire the property of all copies of another book which contained printed therein a few pages or passages of his book." In such a case the plaintiff would be entitled to delivery for cancellation. *Wane* v *Seebohen*, (1888) 39 Ch D. 73—Oldfield, p. 87. One of the co owners can sue under this section. *Vide Lauri* v. *Renad*, (1892) 3 Ch. 402; *Cecinski* v. *Routledge*, (1916) 2 K. B. 325 Under s 7 the plaintiff has right of detinue in respect of unsold infringing copies and action for conversion with regard to copies sold. 126 Ind. Cas 197=34 C. W N. 540=51 C. L J. 243=A. I. R. 1931 Cal 233 In an action for breach of copyright, whether book was improperly used by another person is a question of fact. 142 Ind. Cas. 815=64 M. L. J. 193=34 M. L. W. 314=1933 P. L. J. 393=A I. R. 1933 P. C. 26.

8. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware, and had not reasonable ground for suspecting, that copyright subsisted in the work.

Exemption of innocent infringer from liability to pay damages, etc.

Notes—By Berlin Convention the necessity of registration has been done away with So there may be cases, in which for want of registration the defendant may not be aware of the existence of the copyright in the work. This section has been enacted to meet such contingency In order to be entitled to an exemption under

ger, p. 173.

9. (1) Where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition

Restriction on remedies in the case of architecture.

(2) Such of the other provisions of this Act as provide that an infringing be the property of the owner of the copy- , shall not apply in any case to which this

Notes.—In such a case the only remedy of the plaintiff lies in an action for damage. As regards amount of damage, *vide Lufort* v *Lallemant*, cited in Oldfield, p. 90; *Birn* v. *Keen*, (1918) 2 Ch. 281; *Fenning* v. *Wolverhampton*, (1914) 31 L. T. 1171.

10. An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

Limitation of actions.

Notes.
7, (*Vide*, Co
under sectic
such an act and not from the original making of the work. *Ibid.*

* * * * *

Importation of Copies.

14.* (1) Copies made out of the United Kingdom of any work in which copyright subsists which if made in the United Kingdom would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Commissioners of Customs and Excise, that he is desirous that such copies should not be imported into the United Kingdom shall not be so imported, and shall subject to the provisions of this section, be deemed to be included in the table of prohibitions and restrictions contained in section 42 of the Customs Consolidation Act, 1876,† and that section shall apply accordingly.

Importation of copies.

(2) Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs and Excise may require the regulations under this section, whether as to information, conditions or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the copies are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs and Excise may make regulations, either general or special, respecting the detention and forfeiture of copies, the importation of which is prohibited by this section, and the conditions. if any, to be fulfilled before such detention and forfeiture, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) The regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works

(5) The regulations may provide for the informant reimbursing the Commissioners of Customs and Excise all expenses and damages incurred in respect of any detention made on his information and of any proceedings consequent on such detention; and may provide for notices under any enactment repealed by this Act being treated as notices given under this section.

(6) The foregoing provisions of this section shall have effect as if they were part of the Customs Consolidation Act, 1876 Provided that, notwithstanding anything in that Act, the Isle of Man shall not be treated as part of the United Kingdom for the purposes of this section.

(7) This section shall, with the necessary modifications, apply to the importation into a British possession to which this Act extends of copies of works made out of that possession.

Delivery of Books to library.

15. (1) The publisher of every book published in the United Kingdom, shall, within one month after the publication, deliver, at his own expense, a copy of the book to the trustees of the British Museum, who shall give a written receipt for it.

Delivery of copies to British Museum and other libraries.

(2) He shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month

* Sections 11 to 13 are not in force in British India.

† 39 and 40 Vict, c. 36.

after publication, to some depot in London named in the demand a copy of the book for, or in accordance with the directions of the authority having the control of each of the following libraries, namely: the Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of Trinity College, Dublin; and, subject to the provisions of this section, the National Library of Wales. In the case of an encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

(3) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations belonging thereto finished and coloured in the same manner as the best copies of the book are published, and shall be bound, sewed or stitched together, and on the best paper on which the book is printed.

(4) The copy delivered for the other authorities mentioned in this section shall be on the paper on which the largest number of the copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(5) The books of which copies are to be delivered to the National Library of Wales shall not include books of such classes as may be specified in regulations to be made by the Board of Trade.

(6) If a publisher fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding five pounds and the value of the book, and the fine shall be paid to the trustees or authority to whom the book ought to have been delivered

(7) For the purposes of this section, the expression "book" includes every part or division of a book, pamphlet, sheet of letter-press, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letter-press or in the maps, prints, or other engravings belonging thereto.

Publisher—Publisher is one who projects, conducts, and carries on, or is the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever · *Wardlock & Co Ltd.* v *Long*, (1906) 2 Ch. 550 at p. 560 cited in Oldfield, p. 101.

Special Provisions as to certain Works.

16. (1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licenses a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.

Works of joint authors.

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other
or authors thereof.
it shall be the same as it would have
conditions as aforesaid.
work of joint authorship" means a work produced by the collaboration of two or more authors in which the con-

tribution of one author is not distinct from the contribution of the other author or authors.

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

Notes.—By mere suggesting an idea person does not become a joint author. ...ulton, (1924) W. N. 130. In *Levy* ... 528 said: "If the piece had been ... in prosecution of a preconceived ... co-authors of the whole play, notwithstanding that different portions were respectively the sole productions of either." In the same case *Keating J.* said: "Though it may not be necessary that each should contribute the same amount of labour, there must be a joint labouring in furtherance of a common design." The copyright rests in the joint authors as tenants in common and not as joint tenants. *Louri* v. *Renad*, (1892) 3 Ch. 402; *Powel* v. *Head*, 12 Ch. D. 686. *Trade Auxiliary* v. *Middlesborough*, (1889) 40 Ch. D. 425. One of two joint authors can restrain the other by injunction from publishing the joint work. *Cecinoki* v. *Routledge*, (1916) 2 K. B. 325. When one of the co-authors does not satisfy the conditions conferring copyright in this Act, the author who does satisfy such conditions is considered as the sole author. He can alone grant licenses to publish such a work. *Lauri* v. *Renad, ubi supra*; *Powell* v. *Head*, 12 Ch. D. 686; *Trade Auxiliary* v. *Middlesborough*, (1888) 40 Ch. D. 425. An employer of an author is not a joint author *Levy* v *Rutley*, (1871) L. R. 6. C. P. 523; *Eaton* v. *Lake*, (1888) 20 Q. B D. 378; *Tate* v. *Gulbroak*, (1908) 1 K. B. 821.

Sub-section (4)—"Presumably this sub-section was inserted in order to make it clear that the whole of this copyright is not to belong to the husband under his common law right to the personal property of his wife. It is little curious, therefore, to find that there is no similar provision for the case where a married woman is a co-author with a person other than her husband"—Copinger, p 210. It is submitted that in England in such a case by virtue of this sub-section the person other than her husband will be the sole author of the copyright. But this sub-section is redundant in India where married woman's earning is her separate property. (*vide* Act III of 1874).

Posthumous works.

17. (1) In the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public nor, in the case of a lecture, been delivered in public, before that date, copyright shall subsist till publication, or performance or delivery in public, ... fifty years thereafter and the prov... case of such a work, apply as if the ... tion or performance or delivery in public as aforesaid.

(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public nor delivered in public, shall be *prima facie* proof of the copyright being with the owner of the manuscript.

Notes.—Sub section (1) does not apply to artistic work other than engravings—Oldfield, p. 110.

Provisions as to Government publications.

18. Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

Notes.—Originally the copyright of all the publications belonged to the Crown. Gradually this right is partially lost by the Crown. Now the Crown has copyright in the authorised version of the Bible. [*University of Oxford and Cambridge* v. *Richardson*, (1802) 6 Ves. 689 ; *Manners* v. *Blair*, 3 Bli. (N. S) 391 ; *Red Letter Testament, In re.* (1900) 17 :T. L. R. 1] and Prayer Books. Before this Act, Government had copyright in the Acts of Parliament and other Government publications, *Basket* v. *Cambridge University*, (1758) 1 W. Bl. 105. "This section therefore, whilst preserving any special copyright of the Crown, as in the case of the Bible and Prayer Book vests the copyright in all other works prepared by or on behalf of the Government, in the Crown, whether or not the actual author of the work was under a contract of service with the Crown, and the period of copyright is to be the gross period of fifty years, from the date of the publication of the work." Copinger, p. 249 This section has not made any provision as regards unpublished work of the Crown. This section has no application so far as a work published with license of the Crown is concerned. (1926) 1 Ch. 433.

Provisions as to mechanical instruments.

19. (1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make, within the parts of His Majesty's dominions to which this Act extends, records, perforated rolls or other contrivances by means of which the work may be mechanically performed, if such person proves—

(*a*) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work ; and

(*b*) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned :

Provided that—

(i) nothing in this provision shall authorize any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question ; and

(ii) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

(3) The rate at which such royalties as aforesaid are to be calculated shall—

(*a*) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent. ; and

(*b*) in the case of contrivances sold as aforesaid after the expiration of that period, be five per cent,

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of contrivance shall, in no case, be less than a half-penny for each

musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing :

Provided that, if, at any time after the expiration of seven years from the commencement of this Act, it appears to the Board of Trade that such rate as aforesaid is no longer equitable, the Board of Trade may after holding a public inquiry, make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just, but any order so made, shall be provisional only and shall not have any effect unless and until confirmed by Parliament ; but where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

producing two or more different
ers of the copyright therein are
oyalties under this section shall
be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time.

(6) For the purposes of this section, the Board of Trade may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Board think fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.

(7) In the case of musical works published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions :—

(*a*) The conditions as to the previous making by, or with the consent or acquiescence of the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work shall not apply :

(*b*) The rate of two and one-half per cent. shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the 1st day of July, 1913, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends before the 1st day of July, 1910 :

(*c*) Notwithstanding

to the author or his legal personal representatives and not to the assignees, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives :

(*d*) The saving contained in this Act of the rights and interests arising from, or in connexion with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section :

(e) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of records, perforated rolls or other contrivances by means of which the work may be mechanically performed

(8) Notwithstanding anything in this Act where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsists therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived :

Provided that—

(i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright ; and

(ii) ... onstrued as conferring copyright in any such ... ould have infringed copyright in some othe ... had been in force at the time of the making of the first mentioned contrivance.

... author ... rforated ... may be ... 3. 395

Sub section (2)—The rights given by the Copyright Act, 1911, to the author of a musical production to restrain the manufacturer of records upon giving notice to the author and paying royalties to him, do not affect any copyright vested in an assignee under an assignment made before the Act *Chappel* v. *Calumbia Gramophone Co*, (1914) 2 Ch. 127, 745

Sub-section (6)—Under sub-section (6) the Board of Trade may make regula- ... royalties, and any ... requiring payments ... 4) 1 K B 395

Provision as to political speeches

20. Notwithstanding anything in this Act it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

Provisions as to photographs

21. The term for which copyright shall subsist in photographs shall be fifty year from making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

Notes—This section applies irrespective of the fact that the photograph is published or unpublished. A negative will be deemed to be made not upon exposure, but upon the plate being developed and fixed. *Vide* Copinger's *Copyright*, p 85. The copyright dates from the making of the original negative and subsists period of fifty years from that date Where, however, the work is ordered another person and is made for valuable consideration, the first ownership in copyright belongs to the person so ordering the work in the absence of any agreement. *Vide* section 5 (1) (a). But the proprietory right in the neg

remain with the photographer. *Pollard* v. *Photograph Co.* 40 Ch. D. 345; *Bolton* v. *London Exhibitions*, 84 T. L. R. 550.

Provisions as to designs registerable under 7 Edw. 7, c. 29.

22. (1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

(2) General rules under section 86 of the Patents and Designs Act 1907, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid.

Notes.—This section is intended to make the distinction between the law of copyright and the law of design. Under the old law there was no considerable overlapping. Such a division has, however, now become necessary by reason of the inclusion of works of artistic carftsmanship and architectural works of art as matter for copyright protection—Oldfield's *Law of Copyright*, p. 124

Works of foreign authors first published in parts of His Majesty's dominions to which Act extends

23. If it appears to His Majesty that a foreign country does not give, or has not undertaken to give, adequate protection to the works of British authors, it shall be lawful for His Majety by Order in Council to direct that such of the provisions of this Act as confer copyright on works first published within the parts of His Majesty's dominions to which this Act extends. shall not apply to ... s whereof are ... His Majesty's ... works.

Notes.—"The intention of this Act is that by Order in Council, the benefit of the protection under the Act should be extended to foreign countries when such countries give reciprocal advantages, and it may be assumed that such extension will be made before the Act comes into force in favour of those countries that are members of the copyright union, so that any author who first publishes in a union country ... t if he were a native of the country. ... ncil to withhold the advantages of the Act, ... ive been conferred, if such a case should ... where, it appears "that a foreign country does not give or has not undertaken to give adequate protection to the works of British authors."—Oldfield's *Law of Copyright*, p. 128.

Existing work.

24. (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder:

Provided that—

(*a*) if the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the

right would have so expired was the owner of the right or interest shall be entitled at his option either —

(*i*) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined, by arbitration ; or

(*ii*) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment ;

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the *London Gazette* and in two London newspapers;

(*b*) where any person has, before the 26th day of July, 1910, taken any action whereby he has incurred any expenditure or liability in connexion with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connexion with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

(2) For the purposes of this section, the expression "author" includes the legal personal representatives of a deceased author.

(3) Subject to the provisions of section 19, sub-sections (7) and (8) and of section 33 of this Act, copyright shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with, the provisions of this section.

Notes.—An entry in the Copyright Register Book under section 3 of the previous Copyright Act is *prima facie* evidence of the proprietorship of the person mentioned therein, but the absence of that provision from the new Copyright Act, does not make it none the less evidence when the new Act grants to the owners of existing copyrights, right at least as valuable as the rights given under the repealed Act. Section 114 of the Evidence Act can, therefore, be invoked to make such evidence admissible. 30 Ind. Cas. 721=16 Cr. L. J. 673. This section makes this Act retrospective and this Act is to be considered as if in force at the time when this was made for the purpose of computing the term for which copyright subsists.—Oldfield's *Law of Copyright* p. 120. Where copyright is subsisting on date of Act, new

...314=A. I. R.

...ned his right ...nary interest ... provisions ...y him upon ...ense to one ... that term, ...ht" "for the ... p. 267.

Application to British Possessions.

Application of Act to British dominions.

25. (1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions: ... that it shall not extend to a self-governing ...

nion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature.

(4) If the Secretary of State certifies by notice published in the *London Gazette* that any self governing dominion has passed legislation under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then, whilst such legislation continues in force, the dominion shall, for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this Act extends; and it shall be lawful for the Secretary of State to give such a certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, manufactured in a foreign country, under the law of the dominion, differ from those under this Act.

[illegible] his Act with or without modifications has been [illegible] ns, the law in such dominions is in accor- [illegible] to such dominions, and the Colonial Acts in force there.—Oldfield's *Law of Copyright*, p. 134.

Legislative powers of self-governing dominions.

26. (1) The Legislature of any [illegible] time, rep[illegible] ing to cop[illegible] this Act) so far as they are operative within that dominion: Provided that no such repeal shall prejudicially affect any legal rights existing at the time of the repeal, and that, on this Act or any part thereof being so repealed by the Legislature of a self governing dominion that dominion shall cease to be a dominion to which this Act extends.

(2) In any self-governing dominion to which this Act does not extend, the enactments repealed by this Act shall, so far as they are operative in that dominion, continue in force until repealed by the Legislature of that dominion.

(3) Where His Majesty in Council is satisfied that the law of a self-governing dominion to which this Act does not extend provides adequate protection within the dominion for the works (whether published or unpublished) of authors who at the time of the making of the work were British subjects resident elsewhere than in that dominion, His Majesty in Council may, for the purpose of giving reciprocal protection, direct that this Act, except such parts (if any) thereof as may be specified in the Order, and subject to any conditions contained therein, shall, within the parts of His Majesty's dominions to which this Act extends, apply to works the authors whereof were, at the time of the making of the work, resident within the first mentioned dominion, and to works first published in that dominion; but save as provided by such an Order, works the authors whereof were resident in a dominion to which this Act does not extend shall not, whether they are British subjects or not, be entitled to any protection under this Act except such protection as is by this Act conferred on works first published within the parts of His Majesty's dominions to which this Act extends:

Provided that no such Order shall confer any rights within a self governing dominion, but the Governor in Council of any self-governing dominion to which this Act extends may, by Order, confer within that dominion the like rights as His Majesty in Council is, under the foregoing provisions of this sub-section, authorised to confer within other parts of His Majesty's dominions.

For the purposes of this sub-section, the expression, "a dominion to which this Act extends" includes a dominion which is for the purposes of this Act to be treated as if it were a dominion to which this Act extends.

Notes—It is to be noted that sub-section (1) gives the legislature of any self-governing dominion power to repeal any enactment relating to copyright including the Act of 1911 ; all the dominions have now repealed the legislation prior to the Act of 1911 which applied to them—*Vide* Copinger, p. 301.

Power of Legislatures of British possessions to pass supplemental legislation.

27. The Legislature of any British possession to which this Act extends may modify or add to any of the provisions of this Act in its application to the possession, but except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof were, at the time of the making of the work, resident in the possession, and to works first published in the possession.

Notes—This sub-section corresponds to resolution 2(b) of the Imperial Copyright Conference, 1910. It applies to all British possessions except the self governing dominions unless adopted by those dominions The result is that local Acts will only be operative within the possession —Oldfield's *Law of Copyright*, p. 136.

Application to protectorates.

28. His Majesty may, by Order in Council, extend this Act to any territories under his protection and to Cyprus, and on the making of any such Order, this Act shall, subject to the provisions of the Order, have effect as if the territories to which it applies or Cypurs were part of His Majesty's dominions to which this Act extends.

Notes—The administration of Cyprus is entrusted to England under a treaty of June 4, 1887.

PART II.

INTERNATIONAL COPYRIGHT.

Powers to extend Act to foreign works.

29. (1) His Majesty may, by Order in Council, direct that this Act (except such parts, if any, thereof as may be specified in the Order) shall apply—

(*a*) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which this Act extends ;

(*b*) to literary, dramatic, musical and artistic works, or any class thereof, the authors whereof were, at the time of the making of the works, subjects or citizens of a foreign country to which the Order relates, in like manner as if the authors were British subjects ,

(*c*) in respect of residence in a foreign country to which the Order relates in like manner as if such residence were residence in the parts of His Majesty's dominions to which the Act extends ;

and thereupon, subject to the provisions of this Part of this Act and of the Order, this Act shall apply accordingly .

Provided that—

(*i*) before making an Order in Council under this section in respect of any foreign country (other than a country with which His Majesty has entered into a convention relating to copyright), His Majesty shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to His Majesty expedient to require for the protection of works entitled to copyright under the provisions of Part I of this Act ;

(*ii*) the Order in Council may provide that the terms of copyright within such parts of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates ,

(*iii*) the provisions of this Act as to the delivery of copies of books shall not apply to works first published in such country, except so far as is provided by the order ;

(*iv*) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order ;

(*v*) in applying the provisions of this Act as to ownership of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country ;

(*vi*) in applying the provisions of this Act as to existing works, the Order in Council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section 5 of the International Copyright Act, 1886.*

(2) An Order in Council under this section may extend to all the several countries named or described therein.

[illegible] works of persons resident in that country. Copinger's *Copyright*, p. 294

30. (1) An Order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possessions specified in the Order with respect to which it appears to His Majesty expedient that the Order should not apply.

Application of Part II to British possessions.

(2) The Governor in Council of any self-governing dominion to which this Act extends may, as respects that dominion, make the like orders as under this Part of this Act. His Majesty in Council is authorised to make with respect to His Majesty's dominions other than self-governing dominions and the provisions of this Part of this Act shall, with the necessary modifications, apply accordingly

(3) Where it appears to His Majesty expedient to except from the provisions of any Order any part of his dominions, not being a self-governing dominion, it shall be lawful for His Majesty by the same or any other Order in Council to declare that such Order and this Part of this Act shall not, and the same shall not, apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order.

Notes.—Under this section the self-governing dominions are enabled to make their own Orders in Council, applying the law in such dominions to foreign works. This is new law.—Oldfield's *Law of Copyright*, p. 148.

PART III.

Supplemental Provisions,

31. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

Abrogation of common law rights.

Notes.—The new Act, however, abolishes common law copyright, and confers statutory copyright upon all works as from the date when the same are made. In dealing with unpublished works it is advisable to distinguish three things, which are

* 49 & 50 Vict., c. 33.

somewhat intermingled in the older cases, namely; (a) the right to the material thing, such as the manuscript; (b) the right to publish the manuscript by making copies thereof or extracts therefrom; and (c) the right to make use of the ideas or information conveyed by the manuscript, without copying the actual language employed therein. The second right only belongs properly to the law of copyright; the first is protected by the ordinary possessory remedies and the third by that equitable jurisdiction to restrain breaches of trust and confidence which is expressly

ght, p. 27.
but such
the case.
e v. *Rose*;
ichardson,
; *Lamb* v.
Evans, (1893) 1 Ch. 218; *Merryweather* v. *Moore*, (1892) 2 Ch 518; *Robb* v. *Green* (1895) 2 Q B 315; *Measures*, (1910) 2 Ch.
Louis v. *Smellie*, (1895) W. N. 115; *Tuck* v
v. *Photographic Co*, (1888) 40 Ch D 345;
of trust or confidence, it must be proved that
work by committing a breach of contract or
circumstances. Copinger, p. 31. No action
brought against a *bonafide* purchaser of the
Pennel, (1907) 2 Ch. 577.

32. (1) His Majesty in Council may make Orders for altering, revoking, or varying any Order in Council made under this Act, or under any enactments repealed by this Act, but any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the order comes into operation, and shall provide for the protection of such rights and interests.

Provisions as to Orders in Council.

(2) Every Order in Council made under this Act shall be published in the *London Gazette* and shall be laid before both Houses of Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

33. Nothing in this Act shall deprive any of the universities and colleges mentioned in the Copyright Act, 1775,* of any copyright they already possess under that Act, but the remedies and penalties for infringement

Saving of University copyright.

Act and not under that Act.
, that no new perpetual copyright can be
lfield's *Law of Copyright*, p 150.

34. There shall continue to be charged on, and paid out of, the Consolidated Fund of the United Kingdom such annual compensation as was immediately before the commencement of this Act payable in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books:

Saving of compensation to certain libraries.

Provided that this compensation shall not be paid to a library in any year, unless the Treasury are satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library.

Interpretation.

35. (1) In this Act, unless the context otherwise requires,—

"Literary work" includes maps, charts, plans, tables, and compilations;

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of

* 15 Geo 3. c. 58.

which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character ;

"Artistic work" includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs ;

"*Work of sculpture*" *includes casts and models* ;

"Architectural work of art" means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction ;

"Engravings" include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs ;

"Photograph" includes photo-lithograph and any work produced by any process analogous to photography :

"Cinematograph" includes any work produced by any process analogous to cinematography ;

"Collective work" means—

(*a*) an encyclopædia, dictionary, year-book, or similar work ;

(*b*) a newspaper, review, magazine, or similar periodical ; and

(*c*) any work written in distinct parts by different authors, or in which works or parts of works of different authors, are incorporated ;

"Infringing," when applied to a copy of a work in which coyyright subsists, means any copy, including any colourable imitation made or imported in contravention of the provisions of this Act;

"Performance" means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument ;

"Delivery," in relation to a lecture, includes delivery by means of any mechanical instrument ;

"Plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made ;

"*Lecture*" *includes, address, speech, and sermon* ;

"Self-governing dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) For the purposes [illegible] ments of copyright), a [illegible] in public, and a lecture [illegible] published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors, administrators or assigns.

(3) For the purposes of this Act, a work shall be deemed to be first published within the parts of His Majesty's dominions to which this Act extends, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of His Majesty's dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may, for the time being, be fixed by Order in Council.

(4) Where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with, if the author was, during

any substantial part of that period, a British subject or a resident within the parts of His Majesty's dominions to which this Act extends.

(5) For the purposes of the provisions of this Act as to residence, an author

y's domi-

colourable imitation. 126 *Ind. Cas.* 197=34 *C. W. N.* 540=51 *C. L. J.* 243=A. I. R. 1931 *Cal.* 233. Colourable imitation is question of fact to determine which similarity is great point to be considered. 126 Ind. Cas. 197=34 C. W. N. 540=51 C. L. J. 243=A. I. R. 1931 Cal. 233.

Domicile.—Residence and domicile are not necessarily the same. "The distinction between the import of the terms 'residence' and 'domicile' is obvious. The first is used to indicate the place of dwelling whether permanent or temporary, the second to denote a fixed, permanent residence, to which, when absent, one has the intention of returning." *Per Beck J.* in *Cohen* v. *Daniel*, 25 Iwa. 90. "By domicile we mean home, the permanent home. *Per Lord Cranworth*, in *Whitaker* v. *Hume*,

"Residence in a territory

Per Chitty J. in *Fortal*

ace or country in which

moving therefrom." *Per*

ments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule:

Repeal.

Provided that this repeal shall not take effect in any part of His Majesty's *dominions until this Act comes into operation in that part.*

Notes—The repeal is to take effect in the first instance in the United Kingdom of Great Britain and Ireland.

Short title and commencement.

37. (1) This Act may be cited as the Copyright Act, 1911.

(2) This Act shall come into operation—

(*a*) in the United Kingdom, on the 1st day of July, 1912, or such earlier date as may be fixed by Order in Council;

(*b*) in a self-governing dominion to which this Act extends, at such date as may be fixed by the Legislature of that dominion;

(*c*) in the Channel Islands, at such date as may be fixed by the States of those Islands respectively;

(*d*) in any other British possession to which this Act extends, on the proclamation thereof within the possession by the Governor.

SCHEDULES *

FIRST SCHEDULE.

Section 24.

EXISTING RIGHTS.

Existing Right.	Substituted Right.
(*a*) *In the case of works other than Dramatic and Musical Works.*	
Copyright.	Copyright as defined by this Act. †

* *Vide* Section 24.

† In the case of an essay, article, or portion forming part of and first published in a review, magazine or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article, or portion in a separate form to which the author is entitled at the commencement of this Act, or would if this Act had not been passed, have become entitled under section eighteen of the Copyright Act, 1842.

Existing Right.	Substituted Right.
(b) In the case of Musical and Dramatic Works.	
Both copyright and performing right.	Copyright as defined by this Act.*
Copyright, but not performing right.	Copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public.
Performing right, but not copyright.	The sole right to perform the work in public but none of the other rights comprised in copyright as defined by this Act.

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meanings :—

"Copyright," in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law (if any) to restrain publication or other dealing with the work ;

"Performing right," in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law (if any) to restrain the performance thereof in public.

SECOND SCHEDULE

[Enactments Repealed]

Session and Chapter.	Short Title.	Extent of Repeal.
8 Geo. 2, c. 13	The Engraving Copyright Act, 1734.	The whole Act.
7 Geo. 3, c. 38.	The Engraving Copyright Act, 1767.	Ditto.
15 Geo. 3, c. 53.	The Copyright Act, 1775. ...	Ditto.
17 Geo. 3, c. 57.	The Prints Copyright Act, 1777.	Ditto.
54 Geo. 3, c. 56	The Sculpture Copyright Act, 1814.	Ditto.
3 and 4 Will. 4, c. 15.	The Dramatic Copyright Act, 1833.	Ditto.
5 and 6 Will. 4, c. [illegible].	The Lectures Copyright Act, 1835.	Ditto.
6 and 7 Will. 4, c. 59.	The Prints and Engravings Copyright (Ireland) Act, 1836.	Ditto.
6 and 7 Will 4, c. 110.	The Copyright Act 1836 ...	Ditto.
5 and 6 Vict, c. 45.	The Copyright Act, 1842 ...	Ditto.

ning part of and first published
f a like nature, the right shall be
or portion in a separate form to
this Act, or would if this Act
...ction eighteen of the Copyright
Act, 1842.

SECOND SCHEDULE.—*concld.*

Session and Chapter.	Short Title.	Extent of Repeal.
7 and 8 Vict, c. 12.	The International Copyright Act, 1844.	The whole Act.
10 and 11 Vict., c. 95.	The Colonial Copyright Act, 1847.	Ditto.
15 and 16 Vict., c. 12.	The International Copyright Act, 1852.	Ditto.
25 and 26 Vict., c 68.	The Fine Arts Copyright Act, 1862.	Sections 1 to 6. In section 8 the words and pursuant to "any Act for the protection of copyright engravings," and "and in any such Act as aforesaid". Sections 9 to 12.
38 and 39 Vict, c. 12	The International Copyright Act, 1875.	The whole Act.
39 and 40 Vict., c. 36.	The Customs Consolidation Act, 1876.	Section 42 from "Books wherein" to "such copyright will expire." Sections 44, 45 and 152.
45 and 46 Vict, c. 40.	The Copyright (Musical Compositions) Act, 1882.	The whole Act.
49 and 50 Vict., c 33	The International Copyright Act, 1886.	Ditto.
51 and 52 Vict, c. 17	The Copyright (Musical Compositions) Act, 1888.	Ditto.
52 and 53 Vict, c. 42	The Revenue Act, 1889 ...	Section 1, from "Books first published" to "as provided in that section".
6 Edw. 7. c. 36.	The Musical Copyright Act, 1906.	In section 3 the words "and which has been registered in accordance with the provisions of the Copyright Act, 1842, or of the International Copyright Act, 1844 which registration may be effected notwithstanding anything in the *International Copyright Act 1886.*"

[THE SECOND SCHEDULE.]

REPEAL OF ENACTMENTS.

Repealed by the Repealing Act, 1927 (12 of 1927.)

THE COURT FEES ACT, 1870.

ACT NO. VII OF 1870.

Received the G. G.'s assent on 11th March, 1870.

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called the Court Fees Act, 1870.

Extent of Act. It extends to the whole of British India;

Commencement of Act. And it shall come into force on the first day of April, 1870.

Amendments by Local Acts.—The power to amend the Court Fees Act by Provincial Act is given by the Devolution Act (XXXVIII of 1920). The various Local Acts which have amended the Court Fees Act of 1870 have been given in Appendix A at the end of the volume.

schedules for the stamps to be used in certain offices of Courts of Chief Justice. That Act not only prescribes the fees but provides how fees are to be ascertained, how questions as to the sufficiency of fees on document so far as Courts are concerned are to be determined, and the conditions under which only the documents ... to the Act may be received, ... Courts in India. The Court Fees ... e stamped under that Act for the ... 12 A. 129 (F. B.) at p. 139. The ... Court Fees Act, is to lay down rules for the collection of one form of taxation, and the rule that statutes which impose pecuniary burdens or encroach upon, or qualify the rights of the subject, must be strictly construed applies with special force to such provisions of the Act as provides a penalty whatever its nature may be. *Per Mahmood J.* in 8 A. 282. "The Court Fees Act is essentially a fiscal enactment. Its primary object is to provide for and protect the revenue and not to coerce the subject." *Per Manuk J.* in 49 Ind. Cas. 442 at p. 44=49 Pat. L. J. 57 (71); see also 39 C. L. J. 209; 9 M. 148 (F. B.); 14 A. L. J. 850=36 Ind. Cas. 877; 1922 U. B. R. 14; 44 Ind. Cas. 251 (F. B); 37 A. 158=27 Ind. Cas. 731; 34 B 239. "The Court Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenues for the benefit of the state. This is evident from the character of the Act, and is brought out by sectior ... final as between the p... as to this, only where ... *Sir Lawrence Jenkins* ... L. J. 437=21 Bom. L. ... considered as a whole ... 140 Ind. Cas. 47=54 ... 152 Ind. Cas. 241=1, ... power, after it parts w... property. 1932 A. I... compromise. 144 Ind ... 905. In assessing Co... 1933 Mad. 430=1933 ... Cas. 80; see slso 144 ... L. J. 568=56 M. 716=... suit is decided, the C...

fee. 141 Ind. Cas. 175=34 P. L. R. 84=A. I. R. 1933 Lah. 208. In case of alternative reliefs of different values, Court fee only on one yielding higher Court fee need be paid. 135 Ind. Cas. 747=34 M. L. W. 837=62 M. L. J. 150=55 M. 336=A. I. R. 1932 Mad. 158. Defendant making claims as to items in account to be taken in suit, is not required to pay Court-fees on sums claimed. A. I. R. 1933 Mad. 353. Where there was *bona fide* mistake on the part of the appellant, time for payment of deficiency in Court-fee cannot be extended. 142 Ind. Cas. 829=33 P. L. R. 12. Where ... is in suit, Court- ... as on date of ... oses of jurisdic- ... cipal amount of mortgage. A. I. R. 1933 Pat. 625. Interpretation must be in favour of subject. 1933 A. L. J. 673=A I R. 1933 All 488 ; see also A. I. R. 1932 Cal. 346=59 C. 528=35 C. W. N. 1103=137 Ind. Cas. 469. Where special provision applies to particular case, special provision should be followed rather than general. 139 Ind. Cas. 317=1932 M. W. N. 992=63 M. L. J. 764=56 M. 212=A. I. R. 1932 Mad. 605. Valuation cannot be accepted if on face of it it is not reasonable valuation. 140 Ind. Cas. 817=13 P. L. T. 590=A. I. R. 1932 Pat. 319.

Extent of the Act.—Act VII of 1870 has been declared in force—

in Upper Burma generally (except the Shan States), by the Burma Laws Act (XIII of 1898) s 4 (1) Sch. 1 ;

in British Baluchistan by Regulation (II of 1913) s. 3 ;

in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justice and Laws Regulation (III of 1899).

... 3 (*a*) of the Scheduled Districts, namely— ... Pt 1, p. 507) ; ... strict) (see *the Calcutta* ... t of Lohardaga then ... (Pt. 1 p. 509)] ; ... *the Calcutta Gazette*, ... e *the Gazette of India*, 1898 Pt. 1, p 869) ;

North-Western Provinces Tarai (see *the Gazette of India*, 1876, Pt. 1, p 505)

It has been extended, by notification under ss. 5 and 5 A of the same Act, to the following Scheduled Districts, namely :—The Garo Hills District, the Khasia and ... ict, the North Cachar Sub-division of the ... the Nowgong District, and the Dibrugar ... provided that the Act does not apply to ... are assessed to house-tax except in such ... oner may withdraw from the operation of the exemption.—See *the Assam Gazette*, 1897, Pt. 1, p. 861 ; *the Gazette of India*, 1884. Pt. 1, p. 164.

It has also been applied to the Baluchistan Agency Territories by the Baluchistan Agency Law, 1890, 4 (1).

The Act came into permanent operation in Aden on 1st April, 1876.—See *the Bombay Government Gazette*, 1876, Pt 1, p 956

It has been declared inapplicable to proceedings before officers making a settlement, and certain other cases under the Santhal Parganas Settlement Regulation (III of 1872), s. 8. See now the Act as amended by the Santhal Parganas Justice and Laws Regulation (III of 1890).

The act has been amended in Upper Burma (see the Upper Burma Civil Courts Regulation, 1 of 1896. s 36 ; in the Punjab (see the Punjab Courts Act, XVII of 1886, s. 71) ; in Lower Burma (see the Lower Burma Courts Act, VI of 1900, Sch. 1, Pt. I)

Retrospective effect of the Act.—"As observed in *Munjhoori* v. *Akel*, 17 C. W. N. 889=17 C. L. J. 316, every statute which takes away or impairs a vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability, in respect of transactions or considerations already passed, must be deemed retrospective in its operation. The rule that enactments

in a statute are generally to be construed to be prospective and intended to regulate the future conduct of persons is deeply founded in good sense and strict justice; and it has been repeatedly laid down that in the absence of clear word to that effect, a statute will not be construed so as to take away a vested right of action acquired before it was passed. *Badhu Koar* v. *Hafiz*, 18 C. L. J. 274 and
C. W. N. 804=19 C. L. J. 549"
ature meant that where the full fee
ate at the time it is granted has
a second grant is made in respect
W. N. 472=43 C. 625=22 C. L.
ter the Court Fees Act came into
the subsequent Act. 15 W. R. 272; 7 W. R. 161; 7 W. R. 452 But when a plaint is presented with deficit Court-fees, the *Court-fees would be charged in accordance with the Court Fees Act* in force at the date of the presentation. 28 C. W. N. 860=51 C. 216=39 C. L. J. 212. An appeal must be presented to a proper officer, and accordingly such an appeal must be charged with the Court-fees prescribed in the Court Fees Act, which is in force on the date of presentation to the proper officer. 2 Pat. 264=(1923) A. I. R. 150 (Patna); see also 14 W. R. 167; 30 C. W. N. 90=1926 A. I. R. 355 (Cal.); but see 39 C. L. J. 222=28 C. W. N. 403=1924 A. I. R. Cal. 881; *46 M 685=45 M L. J 557=1923 M. W. N. 883 (F. B.).*

How determined.—In each case the Court-fee is to be imposed by the nature of the relief claimed. 21 C. W. N. 375; 40 C. L. J. 150; 20 C. 762; 28 Ind. Cas. 79; 30 M. 18; 21 Ind. Cas. 404=40 C. 615. It is to be imposed on the actual value of the property. 69 Ind. Cas. 513=6 P. L. J. 411. As to when no Court-fee is to be paid, *vide* 12 C. W. N. 917.

"Chief Controlling Revenue authority" defined.

*"2.—In this Act, unless there is anything repugnant in the subject or context, "Chief Controlling Revenue authority" means—

(*a*) in the Presidency of Fort St. George "the Presidency of Fort William in Bengal" † and the territories respectively under the administration of the *Lieutenant-Governors of "Behar and Orissa"* ‡ and the *North Western* Provinces and the Chief Commissioner of Oudh—the Board of Revenue;

(*b*) in the Presidency of Bombay outside Sindh and the limits of the town of Bombay—a Revenue Commissioner;

(*c*) in Sindh—the Commissioner;

(*d*) in the Punjab and Burma, including Upper Burma—the Financial Commissioner; and

(*e*) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf".

Notes.—The ... and the Chief Commissione... United Provinces of Agra ... March 1902, the *Gazette of India*, 1902, Pt. 1, p. 228 and U. P. Act VII of 1902.

CHAPTER II.

Fees in the High Courts and in the Courts of Small Causes at the Presidency towns.

Levy of fees in High Courts on their original sides.

3. *The fees payable for the time being to the clerks and officers (other than* the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by "section 15 of the Indian High Courts Act, 1861 or section 107 of Government of the India Act, 1915" §;

...s (Amendment) Act (10 of 1901), s. 2.
...a inserted by Act 24 of 1917.
...t (24 & 25 Vict., c. 104) and Government ...ations have been substituted by Act 24 of 1917.

or chageable in each of such Courts under No 11 of the First, and Nos. 7, 12, 14 * 20 and 21 of the Second Schedule to this Act annexed ;

Levy of fees in Presidency Small Cause Courts.

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency towns † and their several offices,

shall be collected in manner hereinafter appearing.

Notes.—The words of this section must be controlled by the reference to section 15 of the High Courts Charter Act. 70 Ind. Cas. 813=42 M. L J. 436=16 L. W. 210 =1922 M. W. N. 511=45 M. 849=1922 A. I. R. (Mad.) 421. The Court fees are to be collected in stamps. 4 Pat. 336=1925 A. I R. 392 (Pat.) ; 29 C. W N. 879. No Court-fees are leviable upon a petition of appeal preferred under the Letters Patent of the Allahabad High Court from the judgment of a single judge. 63 Ind. Cas. 318=19 A L J. 677=44 A. 13 The levy of Court-fees in the Presidency Small Cause Courts is provided in this When a suit is transferred from under cl. 13 of the Letters Patent Court as a Court of ordinary origi by s 14 of the Madras City Court Act. 60 M. L J. 435=132 Ind. Cas. 647.

4. No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction ;

Fees on documents filed, &c., in High Courts in their extraordinary jurisdiction ;

or in the exercise of its extraordinary original criminal jurisdiction ;

or in the exercise of its jurisdiction as regards appeals from the "judgments (other than judgments passed in the exercise of the ordinary original Civil Jurisdiction of the Court) of one"‡ or more Judges of the said Court, or of a Division Court ;

in their appellate jurisdiction ;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence ;

or in the exercise of its jurisdiction as a Court of reference or revision ;

as Courts of reference and revision.

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Notes.—Section does not apply to documents produced in High Court under s. 66, Income=tax Act. 145 Ind. Cas. 254=27 S. L. R. 243=A. I. R. 1933 Sind 148. In matters of exemption, registrar must refer matter to Chief Justice. A. I. R. 1935 Cal. 509. Certificate granted under s. 4 is conclusive for certain purposes. *Ibid.*

Memorandum of appeal.—is a document specified in the first and also in the second schedule of the Act and within the meaning of the section. It should not therefore, be filed or recorded in or received by the High Court unless the proper Court fee in respect of it is paid. 12 A. 129 (F. B.) ; see also 30 Ind. Cas. 379 ; 42 Ind. Cas. 675=3 P. L. J. 74=3 P. L. W. 18 ; 18 C. L J. 133 ; 1925 Pat. C. W. N. 65 ; 46 Ind. Cas. 509=3 P. L. J. 484 , A. I R. 1924 (Lah) 401. But no Court-fee was payable on Letters Patent of the Allahabad, Lahore and Patna High Courts appeals from the decision of a single Judge, inasmuch as this section made no provision for the case of such appeal. 44. A. 13=19 A .L. J. 177=63 Ind. Cas. 318; see also 21 A. 178 ; 19 A. W. N 23. ; 68 Ind. Cas. 423=1923 A. I. R. Lah. 275=3 Lah.

* Here the number "16" repealed by the Repealing and Amending Act (XII of 1891) has been omitted.

† See the Presidency Small Cause Courts Act (XV of 1882) Ch. X. For amount of fees payable in certain cause, see the North-Western Provinces Rent Act (XII of 1881), s. 95 as amended by the North-Western Provinces Rent Act (XIV of 1886), s. 2.

‡ The words within quotations have been substituted by Act 19 of 1922.

420 ; 65 Ind. Cas. 675=3 P. L. T. 194=1922 C. W. N. (Pat.) 88 ; 69 Ind. Cas. 428 =1923 Lah. 225. But by the amendment of this section by Act 19 of 1922, the above decisions have been made obsolete. As regards Court-fee payable on review of a decision of a Division Bench, *vide*, 11 A. 176. After receipt the Court may ask the party to pay the deficit Court-fees. 1926 A. I. R. (Bom.) 343 ; see also. 1925 Mad. 1216 The substance of the plaint and not merely the exact relief asked for has ... payable on the plaint. 10 Pat. ... berately and to suit his own ... -fee, the Court is not bound to ... ake good the difficiency. Thus ... exercise of discretion vested in Court under s. 149 C. P. Code. A. I. R. 1934 Cal. 659=61 C. 663=38 C. W. N. 650=A. L. R. 1934 Cal. 658 ; see also A. I. R. 1929 Nag. 183 ; A. I. R. 1929 All. 75=26 A. L. J. 1199=50 A. 980 ; A. I. R. 1924 Lah. 401=71 Ind. Cas. 736 ; A. I. R. 1930 Nag. 224.

Procedure in case of difference as to necessity or amount of fee.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, ... Chief Justice shall appoint either gener ...

When any such ... of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the First Judge of such Court

The Chief Justice' shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

Amendment.—This section has been amended by Mad. Act V of 1922, section 3.

Taxing officer's decision.—The taxing officer's decision is final. 32 A. 59 ; 12 A. 129 (F. B) ; 21 M. 269 ; 29 C. W. N. 879 ; 47 A. 756 ; 3 Pat L. J. 92 ; 4 Pat. L. J. 700 ; (1925) P. H. C. C. 359 ; 92 Ind. Cas. 626 ; 60 C L. J. 201=39 C. W. N. 131 ; A. I. R. 1927 Bom. 643 ; 87 Ind Cas. 137 ; A. I. R. 1927 Mad. 940 ; 52 C. 871 ; 76 Ind. Cas. 347 ; A. I. R. 1932 All. 526. The jurisdiction of the taxing officer does not arise like the jurisdiction of an arbitrator upon a difference of opinion between a Court clerk and a suitor and upon some sort of formal reference to decide that dispute. 29 C. W. N. 879=52 C 871=A. I. R. 1925 Cal. 120. Where no reference under this section has been made at all the Court hearing the appeal must decide it. 47 A. 756=89 Ind. Cas. 122=23 A. L. J 725 ; 37 C. 914.

Scope.—The intention of this section is merely to ensure that the question should be raised before the taxing officer and that he should bring his mind to bear on the question and that he should decide it. 29 C. W. N. 879=52 C. 871 ; see also 20 M. 398. To determine the amount of Court-fee payable on a memorandum of appeal filed in the High Conrt the taxing officer has power to investigate for himself the proper value of the appeal. He can take evidence for that purpose and should not exercise his powers in a summary manner. His decision is final and cannot be reviewed even by the B ... Ind. Cas. 137=6 Pat. L. T. 262=4 ... L. J. 700=52 Ind. Cas. 503 ; 47 A. 756 ... Cas. 626=1926 A. I. R. 147 (Pat.). ... High Court to decide question with regard to the sufficiency of Court-fees paid in Subordinate Court. He has jurisdiction only to deal with question relating to Court-fees in the High Court. A. I. R. 1934 Rang. 268=12 Rang. 335 ; see also A. I. R. 1934 All. 805=150 Ind. Cas. 653=1934 A. L. J. 957. One of the main objects of s. 5 and of other provisions of the Court Fees Act is to obviate the necessity

of an appearance by the revenue authorities prior to the issue of a grant. A. I. R. 1925 Cal. 1201=29 C. W. N. 879=52 C. 871=95 Ind. Cas. 529. No Court-fee is chargeable on memorandum of objections filed under Order 41, rule 26, C. P. Code. 54 A. 465=1932 A. L. J. 149=A I. R. 1932 All. 526. Reference to a Bench can be made under s. 5 even though only singular is used in reference to Judge of High Court. A. I. R. 1935 Pat. 396. Taxing Officer can make reference only in regard to the payment of the Court fee in the High Court. A. I. R. 1935 All. 817

Where the decision of the taxing officer is erroneous, additional Court-fee need not be paid. 15 A. 177 ; 11 A 91 ; but see 46 B 840=67 Ind. Cas. 364. A taxing officer can correct his error. 68 Ind. Cas. 316. Levy of additional Court-fees after decision is not allowable. 32 Ind. Cas. 534. A taxing officer can decide as to deficiency of Court fee on plaint and memo. of appeal in lower Courts. 84 Ind. Cas. 822=1925 All. 184=L. R 6A. 33. The decision of a taxing officer is neither a decree nor an order. 12 A. 129 (F. B).

It is competent to the Chief Justice of a High Court to refer a dispute between a suitor or his attorney and the officer of the Court as regards the Court-fee payable on an appeal from an order of a single Judge on the original side, to the decision of a particular Judge of the High Court under this section. 43 M. L. J. 430=1922 M. W. N. 511=16 L. W. 210=1922 Mad. 421=70 Ind. Cas. 813 ; see also 46 M. 502=1923 Mad 160 , 18 C. W. N. 121 ; 21 Ind. Cas. 502 ; 7 A. L. J. 842.

CHAPTER III.

Fees in other Courts and in Public Offices

Fees on documents filed, &c., in mofussil Courts, or in public offices ;

6. Except in the Courts hereinbefore mentioned, no document of any of the kind specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Scope—Plaints, memorandum of appeals and application for review are documents within the meaning of this section. 12 A. 129 (F. B) ; 10 A. W. N. 39 ; 10 C. W. N. 199 ; 17 C. L. J. 365 (F. B) A succession certificate and certificate of guardianship also require stamp duty. 17 W. R. 48 ; 22 C. 542. As regards documents which do not require stamp duty, *vide* ss. 19, 33 and 35 *infra*. Application which do not require to be in writing are not documents under this section. 2 N. W. P. 418 ; see also 9 W. R. 357. *No fresh Court-fee is to be imposed on plaint returned for filing in a proper Court.* 17 B. 427 ; 8 B. 313 ; 8 M. 62 ; 2 A. 357 ; 1 B. 538 ; 30 C. W. N. 90 ; 12 C. W. N. 917. The Government is not exempted from payment of Court-fees. 25 M. 493. A document is said to be filed which is presented and put on the file. 19 C. 780 A plaint may be filed with deficit Court-fees. 19 C. 780 ; 34 C. 20=11 C. W. N. 38 (F. B.) ; 1 P. L. J. 420 ; 58 Ind. Cas. 216=3 P. L. J. 745 ; 4 Pat. [illegible] M. [illegible] ; 32 M. 305=6 Ind. Cas. 503 (F. B) ; A. I. R. 1934 All. 160=1934 [illegible] randum of appeal, *vide* 24 [illegible] 749 ; : 25 M. 380 ; 24 M. 331 [illegible] 46 Ind. Cas. 509 ; 4 Pat. [illegible] Ind. Cas. 367 (Patna) ; see [illegible] as. 906. Several appeals in [illegible] to enable paying Court-fee [illegible] F. B.)=58 M. L. J. 510=123 [illegible] of limitation does not save [illegible] plaintiff is in joint possession [illegible] Rs 10 for suit for partition, Court ought to frame an issue to determine whether plaintiff has been in joint possession, on date of suit, or proceed with trial. A. I. R. 1921 Oudh 174=8 O. L. J. 279=62 Ind. Cas. 853.

Computation of fees payable in certain suits

7. The amount of fee payable under this Act in the suits* next hereinafter mentioned shall be computed as follows :—

for money ;

i. In suits for money (including suits for damages or compensation, or arrears of maintenance of annuities, or of other sums payable periodically)—according to the amount claimed :

for maintenance and annuities ;

ii. In suits for maintenance and annuities or other sums payable periodically —according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year :

for movable property having a market value ;

iii. In suits for movable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint :

iv. In suits—

for movable property of no market value ;

(*a*) for movable property where the subject-matter has no market-value as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property ;

(*b*) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and consequential relief ;

(*c*) to obtain a declaratory decree or order, where consequential relief is prayed,

for an injunction ;

(*d*) to obtain an injunction,

for easements ;

(*e*) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts ;

(*f*) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal :

In all such suits the plaintiff shall state the amount at which he values the relief sought :†

for possession of lands, houses, and gardens ;

v. In suits for the possession of lands, houses and gardens—according to the value of the subject-matter ; and such value shall be deemed to be—

where the subject-matter is land, and—

(*a*) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,

or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—

ten times the revenue so payable :

(*b*) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid ;

and such revenue is settled, but not permanently—

five [ten,‡ times the revenue so payable :

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* As to the valuation of suits for the purpose of determining the jurisdiction of Courts, see the Suits' Valuation Act (VII of 1887)

[illegible] on 31, shall [illegible] 1," repealed [illegible] by Punjab Act 6 of 1918.

(*c*) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits ;

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood :

(*d*) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned—the market value of the land :

Proviso as to Bombay Presidency ;

Provided that, in the territories subject to the Governor of Bombay in Council the value of the land shall be deemed to be—

(1) where the land is held on settlement for a period not exceeding thirty years, and pays the full assessment to Government—a sum equal to five times the survey-assessment ;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey assessment ; and

(3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted ;

Explanation.—The word "estate," as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue :

for houses or gardens ,

(*e*) where the subject-matter is a house or garden—

according to the market value of the house or garden :

to enforce a right of preemption.

vi. In suits to enforce a right of pre emtion—according to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed :

for interest of assignee of land-revenue.

vii. In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint :

to set aside an attachment ;

viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached :

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.

to redeem ;

ix. In suits against a mortgagee for the recovery of the property mortgaged,

to foreclose ;

and in suits by a mortgagee to foreclose the mortgage,

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the mortgage :

for specific performance ;

x. In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration ;

(b) of contract of mortgage—according to the amount agreed to be secured :

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term :

(d) of an award—according to the amount or value of the property in dispute :

between landlord and tenant.

xi. In the following suits between landlord and tenant :—

(a) for the delivery by a tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

* "(cc) for the recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy,"

(d) to contest a notice of ejectment,

(e) to recover the occupancy of "immovable property"* from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount of the rent of the "immovable property"* to which the suit refers, payable for the year next before the date of presenting the plaint.

Notes—Amendments—This section has been amended in Assam, Bengal, Bihar and Orissa, Madras, the Punjab and U P.

Valuation.—The plaintiff in a declaratory suit with consequential relief is not at liberty to value the suit arbitrarily. 6 C. L. J. 427 , 14 C. L. J. 47 ; 12 M. 223 ; but see 32 C. 734. see also 20 M. 289 ; 18 B. 696 ; 13 B. 517 ; 97 P. L. R. 1901 The provisions of this section are applicable to suits as well as to appeals and the word suit is not here used on contradistinction to appeal.

21 C. W. N. 375=35 Ind. Cas 797 ; 35 C. 202 (P. C) ; 1925 A. I. R. p. 210 ; 6. S. L. R. 72 ; 22 L. W. 515=1925 A. I. R Mad 1248 ; 70 Ind. Cas. 1913 ; 12 C. W. N. 37 ; 9 C. L. J. 128 ; 96 Ind. Cas 129. The valuation should be a reasonable one. 17 C. 680 ; 40 C. L. J. 15. Where in a suit for possession of land with mesne profits and *malikhana* claim, plaintiff valued each item separately, he was liable to pay Court- on each item A. I. R. 1922 Pat. 359=1922 s not include appeals. A. I. R. 1926 Mad. determines the forum of appeal. The word the value assigned by plaintiff in his plaint. A. I. R. 1925 All. 376=47 A 534=23 A. L. J 216=86 Ind. Cas. 1055 ; but see A. I. R. 1922 Mad. 211=45 M. 246=41 M. L. J 587=68 Ind. Cas. 444 ; A. I. R. 1925 Mad. 323=48 M. 652=47 M. L. J. 919=85 Ind. Cas 405. Plaintiff's estimate of value of land in dispute, if contrary to provisions of the Act, cannot be allowed to operate to the prejudice of defendant who can object to valuation. A. I. R. 1927 All. 308=49 A. 398=25 A. L. J 258=100 Ind. Cas. 35. Where trees stand on specific item claimed in plaint, it is not necessary to value them separately. They are included in the valuation of the items themselves. A. I. R. 1927 Mad. 1002=54 M. L. J. 67=105 Ind Cas. 881. Charts issued by District Judge setting out minimum values of land in different parts of the District must not be put upon parties as evidence. A. I. R. 1930 Cal. 65=50 C. L. J. 164=33 C. W. N. 952

* The words within quotations have been added by Act VI of 1905.

Plaintiff or appellant can reduce his claim and effect as a saving of Court-fee if permissible. A. I. R. 1929 All. 308=1929 A. L. J. 547=116 Ind. Cas. 82.

Para (1).

Mortgage suits.—Plaintiffs brought a suit for sale upon a mortgage. There were two prior mortgages on the property in respect of which no relief was claimed and no Court-fee paid *Held*, that the plaintiff can redeem the prior mortgages but cannot obtain a decree for sale—30 A 103 ; A. W. N. 1882, 97. In a mortgage suit the Court-fee is payable on principal plus interest. 7 Bom. L. R. 194 , 18 B 696 ; 35 A. 92.

Decree for mesne profits.—When a suit for recovery of possession and mesne profits is decreed, the mesne profits being directed to be ascertained in the execution, *Held*, that the memorandum of appeal preferred against the decree for mesne profits should bear Court-fee stamp upon the amount of the mesne profits claimed antecedent to the suit. 13 C. W. N. 85 ; see also 17 B. 41 ; 21 M. 371 ; 40 Ind. Cas. 579 ; 49 Ind. Cas. 962.

Future profits.—A . 682 (F. B.). In the case o ·ard- ing mesne profits the C of mesne profits. 16 M. 310 ; see also A. I. R. 1329 Prt. 731=8 Pat. 906.

solely to the amount to be .ed *advalorem* on the amount ·er. 6 A. 488. see also 69 Ind. Cas. 650=A. I. R. 1924 Lah. 380.

Partnership Suit.—The subject-matter of partnership suit would be severance of jural relationship and determination of relative shares of partners. The aggregate of specific amounts will represent value of the subject-matter of the suit. A. I. R. 1930 L.

A , arising from the same cause ise the movable property claimed may comprise a number of separate items ; such a suit must be stamped under cl. 1, s. 7. of the Act. 3A. 131.

The fee payable in a suit for money must be according to the amount claimed. 47 Ind. Cas 992 ; 175 P. W. R. 1918 ; A. I. R. 1925 Rang. 65=84 Ind. Cas. 971 ; A. I. R. 1926 Mad. 542=94 Ind. Cas. 542=50 M. L. J. 213. A suit for balance due on commission agency account is a money suit under s. 7 (1) of the Court Fees Act. 15 S. L R. 82=A. I. R. 1921 Sind 100=64 Ind. Cas. 626 ; A. I. R. 1928 Bom. 476=30 Bom. L. R. 1284.

A suit by the heir of a deceased landlord for the recovery of arrears of rent against a tenant and also for an injunction restraining certain others from disputing his title as landlord, is based upon two causes of action and falls under cl. (i) and cl. (iv) of this section. 6 S. L. R. 114

A suit for money being the balance alleged by plaintiffs due to them on a commission agency is not a suit to obtain a declaratory decree nor one where it is not possible to estimate the subject-matter in dispute at a money value or which is not otherwise provided for by the Court Fees Act. The suit falls under this clause. 64 Ind. Cas. 826=15 S. L. R. 82.

Para (II).

Scope—Where there are general words in a section of a statute, the general words m kind as those specified. Consequently in const Act the expression "other sums payable perio words that precede it. 4 Pat. L. J. 561=51 Ind. Cas 11 ; see also 3 M. L. J. 242 ; 8 M. 384 ; A. W. N. 1886, 228. and 2 of this section. 2 A. 682 falls under this clause. 42 A. p. 205, 71 Ind. Cas 31 ; 1922 A. suit for arrears of maintenance is not a suit for maintenance and, therefore does not apply. A. I. R. 1927 Oudh 623. Where in a family arrangement was made for residence and maintenance of a female member, s. 7 is not app to suit by her for declaration and injunction. 123 Ind. Cas. 240=A. I. R.

198. Where the claim is really for arrears of maintenance Court-fee payable is *ad valorem*. 149 Ind. Cas. 982=A. I. R. 1934 Lah. 755=A. I. R. 1934 Lah. 150.

Para (III).

Vide 4 C. 322=3 C. L. R. 375 ; 2 P. R. 1871 ; 2 A. 63.

Para (IV).

puts upon the plaint, that determines both.—23 C. W. N. 753 ; 31 Ind Cas. 807 ; 2A. 689 ; 32 C 734 ; 17, B 56 ; 38 M 322 (F. B.) ; 16 C. L. J. 914 ; 40 C. 615 ; 16 C. L. J. 191 ; 7 A. L. J 842. But see 14 C L. J. 47 ; 28 P. R. 1906 ; 4 Pat. L. J. 703 ; 5 P. L. J. 394 ; 36 A 500 ; 62 Ind. Cas. 685 ; 44 B. 331. But the plaintiff is not entitled to put an arbitrary valuation but the valuation must always be reasonable. 40 C. 245=16 C. L. J 194=17 C. W. N. 59 ; 17 C. 680 ; 14 C. L. J. 47 ; 19 C. L. J. 15 ; 40 C. L. J. 150 ; 22 B. 823 ; 17 C. W. N. 627 ; 36 A. 500 ; 4 P. L. T. 71 ; 56 Ind. Cas 316 ; 41 Ind. Cas. 95 ; 5 P. L. J. 394 ; 22 B. 315 ; 255 P. L. R. 1903=28 P. R. 1903 But this view does not find support in Bombay, Madras and in the Punjab, *vide* 33 B 307 ; 44 B. 331 ; 23 M 390 ; 2 B. 219 ; 17 B. 56 ; 38 M. 922 ; 30 M. 18 ; 24 M. L. J. 233 ; 43 B. 376=23 C. W. N. 753 (P. C.) ; 1922 Lah 236 ; 22 Ind. Cas. 503 ; 3 Bur. L J. 128=1924 Rang
tion, the plaintiff is at liberty to ma
Sind. Where there is no basis of cash
valuation subject to his paying an
found due A. I. R. 192
revise valuation put by
or arbitrarily low, it can
ing to its judgment or holds that plaintiff's valuation is correct, High Court cannot interfere in revision. A. I. R 1925 Cal. 814=29 C. W. N. 627=86 Ind. Cas. 853. Defendant is bound by plaintiff's valuation of suit for rendition of accounts and must pay Court-fee on appeal on plaintiff's valuation. A. I. R. 1931 Lah. 143=32 P. L R 62=131 Ind. Cas. 337. *Plaintiffs suing to set aside partition deed so far as their share is concerned have to pay Court-fee only on their share.* 138 Ind. Cas. 303=35 M. L. W. 798=62 M. L. J. 712=A. I. R. 1932 Mad. 491=1932 M. W. N. 579

Clause (a)—This clause applies to a suit to obtain possession of a mortgage deed where the debt had not been paid and the defendant was not entitled to keep the deed. 39 P. R. 1871. See also 10 P. R. 1871. A suit to recover title deed of immovable property is not a suit under this sub-clause. 4 C. 322=3 C. L. R. 375. But a suit to recover a bond comes under this clause (1894) P. J. 145 ; see also 10 P. R. 1871 ; 39 P. R. 1875. Suit to have sale deed executed and completed or for recovery of a sale deed already executed, is a suit for specific performance of a contract. A. I. R. 1924 Lah. 439=5 Lah. 75=80 Ind. Cas. 953. In a suit for cancellation of document securing property having money value, the amount or value of the property is the amount [illegible]
A. I. R. 1925 Mad. 1248=50 M. L. J [illegible]

[illegible] 7. (iv) (c), but schedule 2, Art. 17A. (1), because suit is one for declaration without consequential relief A. I. R. 1929 Mad.

09=1934 M. W. N. 1327.
deed is a "document se-
of s. (iv) (a) Court Fees
deeds and sale-deeds is
) thereof A. I. R. 1935
rtain document coupled
with the possession of the property covered by it, the Court-fee is to be computed under s. 7 (iv) (a), Court Fees Act, and not under s. 7 (v). A I. R. 1935 Mad. 863=1935 M. W. N. 981.

designed to cover not merely the cases
ite possibly cases where the plaintiff's

plaintiff. 1882 P. J. 148; 150 P. R. 1908. In a suit for partition of the share of one only out of several co-sharers in immovable property, the proper valuation of the suit for purposes of jurisdiction is the value of the share sought to be separated from

"share" in any property, not the right to "a share" in property. Therefore, a suit for separate possession by partition, falls under section 7 (v) and its market value determines the jurisdictional value. 11 Bom. L. R. 1074=4 Ind. Cas. 243=53 B. 658. In
yable on the plaintiffs' share. 18 B 209. Ac-
his sub-clause has no application in such a
97=13 C. L. R. 249; 6 C. L. J. 651=12 C.
669; 21 C. L. J. 253; 20 C. 762; 44 Ind.
Court, such a suit falls under this clause..
.. 1895; 61 P. L. R. 1916=34 Ind. Cas. 857.
suit for partition of joint family property,
with the other co-parceners, the Court fee is
to be fixed under article 1 of schedule 1 of the Court Fees Act and not under article 17 (vi) of the schedule II of the Act. 8 Ind. Cas. 512=21 M L. J. 21 (F. B); 20 M.

that the property is partible, and the Court-fee
advalorem as that is no decree for possession.
stamped according to the plaintiff's valuation of h
9 Bur. L. T. 97=35 Ind. Cas. 731. If plaintiff is ..
to change the mode of enjoyment, he has to pay Rs. 10. stamp; but if he is not in possession he has to pay *advalorem* fee for his share. A. I. R. 1921 Pat. 78=5 P. L. J. 540=1 P. L. T. 595; see also A. I. R. 1931 Mad 69=59 M. L. J. 899=129 Ind. Cas. 625; A. I. R. 1927 Nag. 248=23 N. L. R. 73=101 Ind. Cas. 770; A. I. R. 1929 Rang. 211=7 Rang. 164=118 Ind. Cas 122; A. I. R. 1926 Pat. 154=7 P. L. T. 295=90 Ind. Cas. 739; A. I. R 1925 Mad. 468=86 Ind. Cas. 627; A. I. R. 1931 Mad. 49=1930 M. W. N. 508=59 M. L J. 913=129 Ind. Cas. 462; A. I R. 1931 Mad. 94=
A. I. R. 1924 Nag. 86=20 N. L. R. 43=81
aside sale under Public Demands Re-
, suit should be valued on the value of
claimed by plaintiff. A. I. R. 1924 Cal.
239=50 C. 832=79 Ind. Cas. 333 Where in a suit for partition, question of plaintiff's title or share is not involved, valuation must be of the entire properties and not only of plaintiff's share. A. I. R 1923 Pat. 343=2 Pat. 432=4 P. L. T. 257=72 Ind. Cas. 916. Where in a partition suit, plaintiff distinctly prays for declaration of title and confirmation of possession by reason of an adverse entry in Record-of-Rights

advalorem Court fee is payable on the value of the plaintiff's share in the land in respect of which the cloud is cast, in addition to the fixed fee for partition. 6 Pat. L. J. by a co-tenant in joint possession for valuation under Sch. II, Art. 17(6), . 7 (iv) (b) and s. 7 (v). 43 M. 396=38 M L. J. 92=55 Ind. Cas. 517 ; see also 34 Ind. Cas. 587=61 P. L. R. 1916=96 P. R. 1916. In a suit for partition, defendant can get his share separated by paying stamp ; no Court-fee is necessary 139 Ind. Cas. 457=36 M L. W. 604=55 M. 975=63 M. L. J. 845=A I R. 1932 Mad. 722. Where plaintiff states that family was already divided in status and he was suing for partition by metes and bounds, suit does not W. N. 508=59 M. L. J. 913=33 comes to Court on footing that . is really a case for partition and assessable to Court-fee on that basis even in appeal. A. I. R. 1932 Cal. 227=35 C. W N. 942=59 C. 315=136 Ind. Cas. 600. Where co-sharer files suit for partition while in possession of part, s. 7 (iv) (b) applies and not schedule 2 Art. 17. 139 Ind. Cas. 676=33 P. L. R. 271=A. I. R. 1932 Lah. 421.

Clause (c).—The substance in the plaint determines whether it falls under this clause. 5 Ind Cas. 927 ; 30 C 788 ; 30 M. 18 ; 38 M. 122 (F. B) ; 35 Ind. Cas. 797=21 C. W. N. 375 ; 48 M. L. J. 688=1925 Mad. 713 ; 80 Ind. Cas. 544=3 Pat. . 5 Pat. 630 ; 16 Ind. Cas. 773=6 S. Suits Valuation Acts, the expres- d immediate remedy in accordance declare. 24 Ind. Cas. 316. It is . must be reasonable. A. I. R. 1935 Pat. 68

Alternative relief—Where plaintiff claims possession of certain property and, in the alternative, for decree for cancellation of some documents, he is not asking for two reliefs separately. It is not suit for declaration with consequential to make 7(iv) (c) applicable. A. I. R. 1929 Oudh 419=6 O. W. N. 704 ; see also A. I. R. 1927 Pat. 123=6 Pat. 17=8 P. L. T. 366=100 Ind. Cas. 913.

Declaratory suit—Where reliefs appear to be of a declaratory nature but are really consequential ones, *advalorem* Court-fees must be paid. A. I. R. 1927 Cal. 775=31 C. W. N. 1045=106 Ind. Cas. 335. Where plaintiff sues for declaration that he is a raiyat and that defendants are his under-raiyats and for ejectment, suit falls within s. 7(iv) (c). 65 Ind Cas. 240. Where plaintiff sues for declaration of right to administration of the estate and appointment of interim receiver, his suit falls within s 7 (iv) (c) of the Court Fees Act. 27 C. W. N. 457=A. I. R. 1923 Cal. 329=75 Ind Cas. 567. In a suit for declaration that decree and a sale held thereunder is fraudulent, without a prayer for possession, plaintiff can put his own value nd. Cas. 38. Suit for . party, is not binding

129 Ind. Cas. 753 ; A. I. R. 1925 Mad. 713=48 M. L. J. 688=87 Ind. Cas. 660. Suit by reversioner, after widow's death, for declaration and possession against an

alienee of widow, falls under clause (iv) (c). 61 Ind. Cas. 565=6 P. L. J. 101. A person not a party to decree may sue to have it declared void without asking for any consequential relief and the suit is not governed by s. 7 (iv) (c). 5 Lah. L. J. 357=A. I. R. 1923 Lah. 373=73 Ind. Cas. 767; see also A. I. R. 1925 Pat. 44=3 Pat. 795=6 Pat. L. T. 82=80 Ind. Cas 655. Suit to declare that an adoption did not take place is one to declare it invalid; and where it affects title to immovable property, *advalorem* fee is to be charged. 58 Ind. Cas. 965. Where plaintiff prays for a declaration of his occupancy right of which he claims to be in possession and for another declaration that the entry in Record-of-Rights as to his status is a nullity, the latter relief is consequential on the former one and the plaint comes under s. 7 (iv) (c). 44 C. 352=21 C. W. N. 834; see also 4 P. L. J. 302=50 Ind. Cas. 298. Suit for declaration of title to land in plaintiff's possession and for perpetual injunction against defendant who resists the plaintiff's claim on the strength of *miras patta*, should be valued at the market value of the land actually in suit and not of the whole area comprised in the *miras patta* 36 Ind Cas 615 Section 7 [illegible] ry decree or order [illegible] other cases. 134 [illegible] or declaration that [illegible] set aside decree and *advalorem* Court-fee must be paid on amount of decree sought to be set aside. 145 Ind Cas. 206=A. I. R 1933 Nag. 214.

In a suit for mere declaration that decree is void, Court-fee of rupees 10 is sufficient A. I. R. 1933 All 488=1933 A. L. J. 673. Suit for declaration that decree is not binding and for injunction restraining defendant from executing it falls under s. 7 (iv) (c) A. I. R. 1933 Lah 246=33 P. L. R. 488=13 Lah. 788 Substance of plaint must be looked at in deciding whether case falls under s. 7 (iv) (c) 135 Ind Cas 499=13 Lah. 391=32 P. L. R. 729=A. I. R. 1932 Lah. 132; see also A. I. R. 1932 All 560=1932 A. L. J 466=141 Ind. Cas. 112; A. I. R. 1932 All 316. Suit for declaration that certain decree is null and void and for declaration that plaintiff is owner of property in suit is one for mere declaration without consequential relief 1933 A. L. J 311=55 A 274=A. I. R. 1933 All. 350. Suit by decree-holder for declaration that certain deeds of gift and sale by judgment-debtor and his wife are fictitious and that property covered by the deeds is capable of attachment is purely declaratory decree. A. I. R. 1931 Oudh 72=8 O. W. N. 124. Where mortgage is executed by minor, in a suit to set aside such mortgage, s 7 (iv) (c) does not apply. A. I. R. 1933 Rang. 109=11 Rang 66=143 Ind. Cas. 541. In a suit to contest an order under s. 387 of the Succession Act, consequential relief is involved, and Court fee is to be paid on subject-matter. A. I. R. 1933 Pesh 13=141 Ind Cas 221 Where plaintiff asks for cancellation of deed of gift, s. 7 (iv) (c) applies. 130 Ind. Cas 46=10 Pat. 432=13 P. L. T. 155=A. I. R. 1931 Pat 78. In a suit by *zarpeshgidar* for declaration that decree for rent and sale in execution thereof did not bind him and for injunction restraining purchaser from taking permission, *advalorem* Court-fee is payable. A. I. R. 1931 Pat. 195=12 P. L. T. 550; see also 61 M. L. J. 39=33 M. L. W. 206=A. I. R. 1931 Mad. 24; A. I. R 1931 Mad 375=1930 M. W. N. 509.

In a suit by landlord to eject tenants after notice praying for declaration of his *Kudi voram* rights, s. 7 (iv) (c) applies A. I. R. 1933 Mad. 42=56 M. 314=36 M. L. W. 701=63 M. L. W. 759. But in a suit by vendor to set aside sale deed and for recovery of possession of property, Court-fee for relief for possession is not necessary. A. I. R. 1933 Mad. 231=56 M. 401=1933 M. W. N. 225=64 M. L. J. 127. Where appeal prays modification of decree by granting declaration that his right could not be sold, the case falls under s. 7 (iv) (c). A. I. R 1931 All. 251=1931 A. L. J 150

Party seeking partition must be in possession of his share. Where he is out of possession of his share he has to sue for possession of his share and also for partition and Court-fee must be paid as in suit for possession. 137 Ind. Cas. 519=54 C. L. J. 317=36 C. W. N. 291=A. I. R. 1932 Cal. 353. Where plaintiff seeks injunction to restrain defendants from enforcing money decree passed against him, he must value injunction according to amount of decree which he seeks to get vacated. 130 Ind. Cas. 445=25 S. L. R. 15=A. I. R. 1931 Sind 15. Where the suit is by husband for restitution of conjugal rights with a prayer for an injunction restraining the wife's parents from obstructing recovery of the wife, it is governed by s. 7 (iv) (c) and the Court-fee is to be paid *advalorem*. 39 C. W. N. 131=60 C. L. J. 201. Where in a declaratory suit, no relief is asked for, a cross-objection to it

not require *advalorem* Court-fees. 152 Ind. Cas. 196=1934 A. L. J. 743=A. I. R. 1934 All. 728. A suit for a mere declaration that plaintiff's share is not liable to attachment, is a mere suit for declaration without consequential relief and as such no *advalorem* Court-fee is to be paid. A. I. R. 1934 Oudh 212=11 O. W. N. 617=148 Ind. Cas. 908. Where a property which has been sold by a widow is acquired compulsorily and the reversioners and the purchaser claim to take the compensation of the money, and the President decides under s. 77 (1) (b), an appeal from his order is not an appeal against an order relating to compensation and hence s. 8 is inapplicable. It falls under s 7 (iv) (c), Court Fees Act. A. I. R. 1935 Cal. 243=60 C. L. J. 216=39 C W. N. 110. Where plaintiff sues for a declaration that certain leases created in respect of debutter property are illegal and invalid and for possession of the property, *the value of the subject-matter of the suit is value of the leasehold interest created* by the leases and not the value of the properties irrespective of the leases. The plaintiff is under the law entitled in a case of the present description, to put his own valuation on the lessee's interest, the subject-matter of the suit, as it cannot be said that the lease hold is capable of strictly accurate valuation. A. I. R. 1935 Cal. 279. Where plaintiff sues to recover possession of property sold, amount fetched cannot be taken into account. Court-fee is to be paid on valuation of property. A. I. R. 1935 Pat 459.

Consequential relief—A prayer for injunction is a consequential relief. 10 B. 63; 18 B 100; 11 C. W N 705=6 C. L J 417; 32 C. 734; 15 M. 15; 33 B. 307; 15 A 378; 43 Ind. Cas. 995; 44 Ind Cas 398; 39 C. 704=16 C. W. N. 838=15 Ind Cas. 427; 46 Ind Cas. 884; 40 C L. J. 150; 34 B. 267; 13 Bom L. R. 158; 111 P R 1913; 1925 A. I R 1143; 133 Ind. Cas. 120; 130 Ind. Cas. 445. But a suit for a declaration and injunction is not merely a suit for consequential relief. 12 C. W. N 369. Plaintiff must fix reasonable valuations and Court can revise if valuation is arbitrary If Court's valuation is also arbitrary High Court can interfere in revision. 12 Pat. L. T. 658=133 Ind Cas 687.

Consequential relief was held to be sought in the following cases :—

(1) In a suit in which the relief claimed is declaration that a decree is fraudulent. 4 Pat L. J. 703; 3 Pat L. J. 92; 56 Ind. Cas 360; 54 Ind. Cas 833; 56 Ind. Cas. 55; A I. R. 1930 Cal 787; 56 Ind. Cas. 316; 26 P L. R. 73; A. I. R. 1927 Lah. 499=8 Lah 531=9 L. L J. 400=102 Ind. Cas. 46; 56 Ind. Cas. 550; 65 Ind. Cas. 980; 116 Ind. Cas 895=30 P. L. R 176=A I R. 1929 Lah. 463; A. I. R. 1934 Oudh 505=11 O. W. N. 1292; A. I. R. 1934 Oudh 212; A. I. R. 1934 Pesh. 109; A. I. R. 1934 Rang 152.

(2) A suit which is brought for cancellation of a document under s. 39 of the Specific Relief Act is a suit for a declaration and a consequential relief. 29 B. 207; 2 L. B. R. 266; 27 M 470, 2 P. R. 1886, see also 21 W. R. 340; 47 A. 78=84 Ind. Cas 624; 13 B L. R 427; 23 M 490; 20 M. L. J 791; 49 M. L. J. 608; A. I. R. 1931 Pat. 453; 43 Ind Cas 407; 33 Ind Cas 624; 87 P. R. 1916; 32 M. L. J 447; 3 Pat. L J. 194; 84 Ind. Cas 201; A I. R. 1926 Mad 96; A. I R. 1929 Nag. 71; A. I. R. 1929 Lah. 811; A I R. 1929 Oudh 491; A. I. R. 1931 Mad. 94; A. I. R. 1932 All. 485 (F. B).

(3) In a suit for assessment of rent and for the recovery of a specific sum of money as damages for use and occupation 4 Pat L J 565.

(4) In a suit for declaration that adoption never took place, where title to immovable property is indirectly in issue. 58 Ind Cas 905; 5 P. L. J. 339.

(5) Suit by a reversioner for declaration of invalidity of alienation by widow and for appo [illegible] J. 101; 3 Pat. L. J. 21, 45 [illegible] s. 839; 96 Ind. Cas. 129; 18 [illegible]

(6) [illegible] office for cancelling [illegible] at L. J 194; 27 B. [illegible] J. 791; 49 M L. J. 608; 25 Ind. Cas. 435; [illegible] L. J. 406.

(7) In a suit where declaration is sought for invalidating a revenue sale and for possession of property sold. 3 Pat. L. J. 488.

(8) When property is required to be released from attachment and possession.

[illegible] eclaration that a sale by Official Receiver [illegible] Receiver. 32 M. L. J 447.

(10) A suit to enforce the registration of a document. 12 M. L. J. 87; but see 12 M L. J. 88.

(11) A suit for the setting aside of the lease and to have the building erected on the land by the lessee demolished is one for a declaratory decree in which consequential relief is sought. 4 A. 320.

(12) A suit to set aside an illegal sale held for arrears of revenue and declaration
· is a suit to obtain a declara-
C. W N. 157 ; see also 2 A.

ossession being out of posses-
sion. 68 Ind Cas. 316 ; 16 W. R. 213 ; 22 C. L. J. 415 ; 21 W. R. 340 ; 22 W. R
; A. I. R. 1923 Pat. 100 ; A. I. R 1927 Nag. 316 ;
=84 Ind Cas. 624 ; 73 Ind. Cas. 43 ; 27 C. W. N.
)2 ; A I. R. 1923 Pat. 100
declaration, that he is a raiyat and the defen-
dants are under-raiyats and for the ejectment of the latter. 65 Ind. Cas. 240

(15) A suit in which removal of attachment is prayed. 2 A. 869 ; 11 B. H. C. A. 186.

(16) Suits for restitution of conjugal rights and injunction A. I R 1935 Cal. 338.

Valuation.—In a suit coming under this section, plaintiff may justly say that his valuation of relief is what he has to pay for. A. I. R 1930 Cal. 473=34 C. W. N. 321=127 Ind. Cas. 665 The "relief sought" on which Court-fee must be levied is sum total of two reliefs, *viz.*, declaration of right and consequential relief and not the consequential relief alone. A I R. 1925 All. 602=47 A. 501=23 A.L J. 344=87 Ind. Cas. 190. Where doubt exists whether fixed or *advalorem* Court-fee is payable, one can refuse to pay *ad valorem*, until it is decided that it should be so paid A I.R 1930 Cal. 787=34 C W N. 1129 =130 Ind. Cas 1129. Plaintiff's valuation, if arbitrary and incorrect, can be corrected by Taxing Officer. A I. R. 1923 Pat 137=2 Pat. 198=4 P.
ation of in-
'alued under
by plaintiff
s to accord
with the value of the subject-matter. A I R. 1924 Nag 295=79 Ind. Cas 113
nsequential relief, plaintiff can
Bom L. R 289=56 Ind. Cas
d to be reasonable by lower
R. 1926 Pat. 334=96 Ind. Cas.
r purposes of s 110 C P. Code,
on suits. A. I R. 1929 Bom.
782 33 P. L. R 458. A suit
lief sought but giving a valuation
Court-fees according to jurisdic-
leave of the Court. 31 Ind. Cas.
807 Suit for declaration with consequential relief for purposes of Court-fee and jurisdiction is governed by s. 7 (iv) (c) A I R. 1922 Nag 264=71 Ind. Cas. 31;
2 Ind. Cas 36 ; A. I R. 1926 Pat.
Plaintiff must fix reasonable valua-
revise it 11 Pat. 161=12 P. L T.
; A I. R 1933 Mad. 430. Where
d lower or no valuation for conse-
on for purposes of jurisdiction. 54
A. 232=1931 A. L. J. 837=A I. R 1932 All 114 In case of declaration in respect of immovable property by plaintiff claiming life interest only, market value governs jurisdiction. 139 Ind Cas 471=A. I. R 1932 Mad 671=1932 M. W N. 780. In a suit for declaration with consequential relief, plaintiff can put his own valuation But when objection is taken by the other party, the Court is competent to enter into the question. 149 Ind. Cas. 109=A. I. R. 1934 Pat. 234 ; see also A I. R 1934 Pat. 641=152 Ind. Cas. 1003 In a suit for possession, general provision will not apply where there is a special provision. A. I R. 1935 Mad. 346.

Suit in which no consequential relief is asked—*Vide* 10 B. 60 ; 11 A. 365 ; 10 B. 610 ; 13 A. 386 ; 13 Ind. Cas 604 ; 130 Ind Cas. 344.

sought.
10 904 ; 25
M. 12 Bom.
L. R. arbitrary

one. 29 C. W. N. 76=40 C. L. J. 150=19 C. L. J. 15; see also 94 Ind. Cas. 951=1926 A. I. R 413 All.=48 A 412. Where there is prayer for injunction, relief can be valued arbitrarily, which is conclusive. If with injunction relief consequential reliefs are prayed for, they should be valued according to law and Court-fee would depend on total value of consequential reliefs. 1918 M. W. N. 40=43 Ind. Cas. 995. Where plaintiff seeks injunction to restrain defendant from enforcing money decree passed against him plaintiff must value injunction according to amount of decree which he seeks to vacate. A. I. R. 1931 Sind 15. A plaintiff under clause (c) or sub-clause (d) of cl. (iv) of s. 7 of the Court Fees Act, may justly say that his valuation of relief is what he has pray
N. 321=127 Ind Cas. 665; see also A.I.R.
to s. 7 cl. 4 (c) and (d), Court fee is to l
which the relief sought is valued in the
A. I. R 1928 Cal. 55=105 Ind. Cas 80; see also A. I. R 1931 Mad. 69=1930 M. W. N. 656=129 Ind. Cas. 625; A. I. R. 1922 Cal. 242=35 C. L. J. 144; A. I. R. 1925 Mad. 1143=89 Ind. Cas. 930; 78 Ind. Cas. 118=A. I R. 1924 Mad. 611=34 M. L. T. 22=1924 M. W. N. 210; 80 Ind. Cas. 969=17 S. L R. 15=A. I. R. 1924 Sind 105. A suit by Hindu reversioner to prevent waste of property in hands of widow and for appointment of Receiver falls under s. 7 (iv) (c). 62 Ind. Cas. 36. Where plaintiff sues for declaration that he is owner of certain property, that an ejectment decree obtained against him should be cancelled on ground of fraud and for a perpetual injunction suit is one for declaration with consequential relief within s. 7 (iv) (c). A. I R 1922 Lah 236=66 Ind Cas 34; see also A. I. R. 1924 Lah. 364=69 Ind Cas. 577; A. I. R. 1925 All 602=47 A. 501=87 Ind. Cas. 190; A. I. R. 1930 Cal 41; A. I. R. 1930 Sind 198; 29 P. L
=120 Ind. Cas. 378; A. I. R 1926 Pat. 249, 52 I
consequential relief of injunction can assign any
1927 Nag. 375=99 Ind Cas 868. Plaintiff is bou
way of injunction on the valuation of the land, acc
A. I. R. 1926 All 423=48 A 412=24 A L. J
suit for injunction restraining municipality from de
purpose of Court-fees and jurisdiction is the same. A. I R. 1929 Lah 566=116 Ind. Cas. 908 In suits to obtain a declaratory decree or order where consequential relief is prayed for, and in suits to obtain an injunction, where the Court finds the relief claimed as undervalued, it is under order 7, rule 11 (b), entitled to require the plaintiff to correct the valuation stated by him in accordance with the provisions of s. 7, Court Fees Act But so long as there are no rules framed under s. 9, Suits Valuation Act (vii of 1887), the Court would have no standard before it on which it may regard the plaintiff's valuation as an undervaluation, and its powers of correction would have to be exercised on that footing A. I. R. 1934 Cal. 448=38 C W. N. 589=59 C L. J. 233=A L. R. 1934 Cal. 455=61 C. 796. Where the relief claimed is injunction, the plaintiff is competent to put his own relief. 12 Rang. 335=A. I. R. 1934 Rang. 268.

Clause (e).—*Vide* 2 N. W. P 41; 18 W. R 21; 79 Ind. Cas. 343=46 M. L. J. 377.

Clause (f)—A suit for administration is on the same footing as a suit for accounts for the purposes of Court-fees. 39 B. 545; 55 Ind Cas. 262; 24 C. L. J. 448; 4 L. B. R. 279; 4 Pat. L J 57=49 Ind Cas 442; 45 C. 634; 10 C. L. J 503; 30 B 545; 27 C W. N. 457; see also A I. R 1935 Rang. 13 As regards what are the suits for accounts, *vide* 18 B. 100, 13 P R. 1931=137 P. L. R. 1901; 14 C. W. N. 932; 21 A. 200. The appeal should be valued on the relief claimed. 39 M. 725; 131 Ind. Cas. 337 Under certain circumstances a defendant-appellant can make his own valuation, *vide* 44 A. 542; 3 Pat. 146=75 Ind. Cas. 871. In a suit for accounts plaintiff can value his suit at any figure for purposes of Court-fee. A I. R. 1924 Rang 354=2 Rang. 408=3 Bur. L J. 207=86 Ind. Cas. 568; see also A I. R 1926 Lah. 248=8 L. L. J. 78=27 P. L. R. 187; A. I. R. 1928 Bom. 476=52 B 904=30 Bom. L. R. 1284; A I. R. 1932 Bom. 111=34 Bom. L R. 44=56 B. 23; A I R. 1933 Mad 431=1933 M.W.N. 631=64 M.L.J. 576; A. I. R. 1932 Mad. 656=35 M. L W. 846=1932 M W. N. 979=139 Ind. Cas. 105. Intention of enacting s. 7 (iv) (f) was that in cases where value of relief cannot be ascertained with accuracy plaintiff or appellant should be person to estimate value of claim. A. I. R. 1931 Rang. 146=9 Rang. 165=133 Ind. Cas. 91. Where defendant appeals from suit for rendition of account, he must pay Court-fee

on valuation of suit by plaintiff. A. I. R. 1931 Lah. 143=32 P. L R 62=131 Ind. Cas. 337 ; see also 133 Ind. Cas. 365=10 Pat. 458=A. I. R. 1931 Pat. 335 ; A I R. 1928 Bom 476=52 B. 904=30 Bom. L. R. 1284=115 Ind Cas. 391 ; A I. R. 1927 Sind 100=21 S. L. R. 377=98 Ind. Cas. 909 ; 79 Ind. Cas. 923 ; 33 C W. N. 743 ; A. I. R. 1930 Pat. 605 ; 33 C. W. N. 781 P. C. ; but see A. I. R. 1926 Lah. 189=26 P. L. R. 825=91 Ind. Cas. 32 ; A. I. R. 1925 All. 787=47 A. 756=89 Ind. Cas 122 ; 4 Pat. L. T. 638=3 Pat. 146=75 Ind. Cas. 87 ; 44 A. 542=20 A. L. J 416=66 Ind. Cas. 841 ; A. I. R. 1934 All. 807=1934 A. L. J. 643 ; A. I. R 1931 Rang 146 (F. B.) ; A. I. R. 1933 Sind 322.

Plaintiff must state approximately correct valuation for all items. He is not entitled to select one or two items for valuation A I. R. 1929 Pat. 626. A suit for administration and accounts is in essence a suit for accounts within the meaning of S. 7 (iv) (f) and the plaintiff can value claim for accounts approximately and pay Court-fees thereon. 45 C. 634=22 C. W. N. 115 ; see also 44 C. 890=21 C. W. N. 310=24 C. L J 448=38 Ind. Cas. 835 ; 55 Ind Cas 258=12 Bur. L T 207 ; 12 Rang 512=A. L R 1934 Rang. 195. Where the appeal is from preliminary decree in a suit for partnership accounts, appellant can fix provisional valuation. 141 Ind. Cas. 277=16 N L J 10=29 N L. R 34=A I. R 1933 Nag 127 ; see also A. I. R. 1933 Mad. 330=56 M 705=1933 M. W. N. 36=64 M L J. 122=37 M L W. 106 =141 Ind. Cas. 6.2 Where some party is appealing from preliminary decree and is praying *advalorem* Court-fee and is appealing from final decree afterwards, he need not again pay *advalorem* Court-fee. 138 Ind. Cas 218=55 M 664=35 M. L. W 621. In a suit for accounts plaint must show that defendant is accounting party and that plaintiff claims on footing of account to be taken to ascertain sum due A. I. R 1932 Mad. 565=35 M. L. W. 358=137 Ind. Cas 871 Provisions of Court-Fees Act are not controlled by Civil Procedure Code, Order 7, rule 1 (2) and 11 (b). A. I R. 1933 Sind 372 In a suit for accounts, the plaintiff is entitled to value the relief sought by him at his own figure Of course if he recovers more, he pays the extra fee under s. 11. A I. R 1935 Bom. 212 It is only when suit itself is for account that Court-fee may be according to amount at which relief sought is valued either in plaint or in memo. of appeal. A. I. R 1935 Bom 69.

Partnership.—Where the plaintiff seeks the relief contemplated by s. 265 of the Contract Act by a suit for account and winding up of partnership he must pay *advalorem* Court-fee stamp 7 B 126 ; 41 M L J. 438 ; 13 C. L R. 160 , 1 M. 340 ; 6 C. 321 ; 7 B. 125 ; 11 Bom. L R 1123 , 7 B 535 ; A I. R 1932. All 413

Para V.

Scope of the Para —Section 7, clause (v) does not apply to a suit for recovery of possession of land of which the plaintiffs claim to be tenants, brought against the admitted landlords and persons who also claim to be tenants of the same ; and the value of the relief sought, as stated in the plaint, determines the jurisdiction of the Court to try the suit 19 C. L J 418 ; see also 32 C 268 ; 15A-63 ; 3 Pat L. J. 448 ; but see 8 C. 892. The land does not include house or garden. 24 A. 218 ; 4 B 515 ; 18 M L. J. 243 Garden is used in the sense of ornamental garden. 40 M. 824. Recovery of possession is an essential element of any suit filed to turn out an encroacher. In such a case the plaint cannot be deemed to fall outside the scope of section 7, merely because other reliefs are also claimed A tank bed has no market value because it is unsaleable except as an accessory to other property. No means exist for ascertaining what, in even such a sale, its value would be. Hence in a suit for ejectment of defendant from tank bed, it is impossible to apply the provisions of s. 7 (v) because the value of the subject-matter is indeterminate The only course is to assess the Court-fee under Art 17 B. A. I R 1934 Mad 714=67 M. L. J 688=40 L. W. 718=1934 M W. N. 1248 It is desirable that s 7(vi) should be made more explicit by expressly providing that in case of land whether built upon [illegible] on such value. A. I R 1931 [illegible] 597=8 O W. N. 536=6 Luck. [illegible] e a[illegible] Will with an incidental [illegible] a suit for ejectment and is [illegible] =98 Ind. Cas 817 ; see also A. [illegible] Cas 19 ; A I R 1929 Sind [illegible] is for possession and right to possession is ancillary to it, it is enough to pay Court fee on relief for possession. A. I. R. 1930 Oudh 368=7 O. W. N. 571=126 Ind. Cas. 688. A. I. R. 1930 Oudh 104=6 O. W. N. 105=124 Ind Cas 420. Suit for declaration of

title as adopted son and for possession comes under s. 7 (v) (c). A. I. R. 1923 Pat. 100. In a suit for possession and part mesne profits, Court-fee payable is on the aggregate value of both the reliefs 32 L. W. 433. Plaintiff who dces not claim a declaration that a decree under which defendant holds possession is not binding on him, but simply sues for possession need pay Court-fee only on it. A. I. R. 1929 Nag. 276 In a suit for specific performance of a contract to sell a property and for delivery of possession of property the value of suit for purposes of jurisdiction and Court-fee should be the market value of the suit property and not the amount of the consideration money. A I R. 1929 Pat. 642=118 Ind. Cas. 134 ; see also A. I. R. 1925 Mad. 804=48 M. L J. 571=88 Ind. Cas. 209. In case of cross-objection claiming possession of an immovable property, the Court-fee is payable *advalorem* on value of property, and should not be calculated on five times the land revenue in accordance with s 7 (v). A. I. R. 1925 All. 119=47 A. 99=85 Ind. Cas. 270 Suit by Hindu reversioner to recover possession of property gifted by Hindu widow after her death falls under clause (v). 3 Pat. L T. 704=1922 Pat. 291 =68 Ind. Cas. 700. In a suit by vendee for possession of land on payment of balance of consideration, Court-fee payable is in accordance with s. 7 (v). 60 Ind. Cas. 512. Court-fee in pre-emption suit in respect of a sale of land paying revenue should be calculated according to s. 7 (v). 15 P. R. 1919=49 Ind Cas 358. In a suit by alleged tenant for possession of land against landlord and third person, Court-fee must be paid under s. 7 (v). A I R. 1933 Nag. 312. But in a suit by landlord to eject tenants after notice praying for de[illegible]
applicable and not s 7 (v) or s. 7 [illegible]
M. L. J. 759=1932 M. W. N. 1197 [illegible]
value of land but value under s 7 cla[illegible]
64 M. L J. 568 The word "posse[illegible] as beneficial owner 142 Ind. Cas. 251=54 A. 869=1932 A. L J 777=A. I. R. 1932 All 593 *Khewat Khata*, though recorded as separately assessed, is not "estate" without separate engagement to Government 145 Ind. Cas. 332=55 A. 531=1933 A. L J. 398=A. I. R. 1933 All. 414 Suit for declaration and also for possession is to be valued according to s. 7 (v). A I. R. 1932 Mad. 605=63 M. L. J. 764 ; see [illegible]

which are worth more than Rs 10,000, the proper method of valuation is not the method provided for in clause (v), s 7 A. I. R 1935 Mad. 279. Where the plaintiff is out of possession, in a suit for partition *advalorem* Court-fee should be paid. A. I. R. 1935 Pesh. 30 ; see also A. I R. 1935 Mad 569

Clause (a).—In a suit to recover possession of a definite share in a permanently-settled revenue-paying estate the Court-fee on the plaint should be calculated according to this clause at ten times of the proportionate revenue annually payable. The definite share does not mean share separately assessed. 12 C W. N 990 ; 8 C. 192 ; see also 33 Ind Cas. 683 ; 58 Ind. Cas. 132 ; 49 C. 880. A plaintiff cannot avail himself of sub-clause (a) of clause 5 of this section, unless he brings his case strictly within its terms and for that purpose the determining factor is the land in suit and not a larger property in which it may be included. 19 C. L J 342. A share in an under-proprietary tenure in a permanently settled village is a definite share of an estate 24 O C 39=58 Ind Cas. 132 ; 45 Ind. Cas. 928. Suit for the recovery of specific plot of land situated within permanently settled estate but not constituting a definite share thereof or a separately assessed to revenue falls within clause (v) (d) and not under clause (v) (a) or (b) of section 7. A I R. 1924 Mad. 646=34 M. L. T. 92=77 Ind. Cas. 781

Clause (b).—*Vide* 8 A L. J 821 ; 29 A 382 ; 3 A L J. 511 ; 41 Ind. Cas. 167 ; 45 Ind. Cas. 982 ; 21 M. L J. 251=39 Ind Cas 254 ; 1924 A. I. R. 102 (Rang.) ; A. I. R. 1934 Rang. 313 ; A.I R 1933 Oudh 505 ; 145 Ind Cas. 332=55 A. 531=1933 A. L J. 398=A. I. R. 1933 All. 414 ; 75 Ind. Cas. 217=A. I. R 1923 Rang. 246 ; 57 Ind. Cas. 494 ; 50 Ind Cas 353 ; 47 Ind. Cas 543 ; 33 Ind. Cas. 683 ; A. I. R. 1935 Lah. 331.

Clause (c)—For the purpose of the Court Fees Act *porombus* in Malabar should be classed either as land paying no revenue or as gardens, and the question is one of a fact which must be decided in each case. 12 M. 30 (F. B.) ; see also 18 P. R. 1875 Before a party can successfully rely on this sub-clause he must establish that

the land in suit pays no revenue permanently or been partially exempted from such payment or is lieu of such revenue. 41 C. 822 ; see also 60 Ind. C ... to fluctuating assessment is governed by this sub clause. 50 Ind. Cas. 142=100 P. R. 1912 ; see also 19 C. L. J. 342.

Year next before—*i.e.* 365 days before. 28 A. 411.

Clause (d)—This clause provides merely for the case of lands excepted from the operation of sub clauses (a) and (b) and has no reference to the case of an entire estate or a definite fraction or part of an estate. 50 Ind. Cas. 142 ; see also 33 Ind. Cas. 683 ; 77 Ind. Cas 281 ; 34 M. L. J. 558=47 Ind. Cas. 543 ; 41 C. 812=18C. W. N. 659 ; 6 P. R. 1883 ; 75 Ind. Cas. 217 ; 79 Ind. Cas. 579 ; 74 Ind. Cas. 198=45 M. L. J. 274 (F. B) ; A. I R. 1935 Lah. 182=116 Ind. Cas 206 ; A. I. R. 1923 Rang. 246. Where claim for possession is for *Khudkast* lands, the case falls under s 7 (v) (d) and not under s. 7 (v) (a). A. I. R 1921 Pat. 466=6 P. L. T 255. In a suit by usufructuary mortgagee for possession, Court-fee should be paid on mortgage money. A. I. R 1924 Oudh 163=73 Ind. Cas 244 In a suit for pre-emption in respect of separate plot of land not forming any definite fraction of distinct revenue paying area, Court-fee is payable on market value of land A I. R. 1933 Oudh 533 =10 O. W. N. 1100 ; see also A. I. R 1932 Pat 319=13 P. L. T. 590=140 Ind Cas. 817

Clause (e)—In suit for land forming a garden and two houses the valuation of Court-fee is governed by this sub-clause and is not to be arrived at, either for Court-fee or in ascertaining jurisdiction, by the artificial 30 times *jama*-rule notwithstanding that the land is assessed to land-revenue 71 P. R 1914 ; 2 Lah. L. J. 362 ; see also, 6 Bom. L R. 475 ; 19 P R. (1908) F B , 65 Ind Cas 345=2 Lah. L. J. 362 ; 9 B L. R 30 ; 72 P R 1899 ; 82 Ind. Cas 614 ; 5 Pat. 631 ; 25 Ind. Cas. 545. A garden whether assessed or unassessed falls under this sub-clause. 18 M. L T. 243. As regards the meaning of a garden, *vide* 40 M. 824= 39 Ind. Cas. 254. There is no market value for a temple Suit for recovery of possession of a temple falls under Sch II Art. 17 (b) and notunder s. 7 (v) (e). 45 M. L. J. 274=74 Ind Cas. 198. Where land falls within meaning of the expression "garden" though it may at the same time be land paying assessment to Government, it requires Court-fee as provided by s 7 (v) (e) A I R 1930 Sind. 15= 24 S. L R. 4=117 Ind Cas 781 ; see also A I. R 1931 Sind 6=130 Ind. Cas. 550 ; 68 Ind. Cas. 345=2 Lah L J 362.

Para VI.—*Vide* 32 A 110 (F B) ; 123 P L. R. 1903 ; 49 Ind. Cas. 358 ; 1924 Lah. 380 ; 76 P R. 1913=19 Ind. Cas. 961 ; 44 Ind. Cas 666 , 117 Ind Cas. 480 , 128 Ind. Cas 286 ; A I. R 1933 Lah. 332 , A. I. R 1933 Lah. 767 ; A. I R. 1931 Lah. 490 ; A I R 1934 Lah. 424.

Para VII—A suit which in terms set aside a sale on the ground that an attachment is not binding is virtually a suit to set aside an attachment and Court-fees should be paid on the amount of the attachment or the value of the land attached whichever is less. 27 A. 440 ; I B 352 ; see also 4 M. L. J. 183 ; 14 M L. J. 144.

Para VIII—In a suit for exemption of joint family property from sale in execution of mortgage decree, Court-fee payable by member suing, is to be calculated on basis of value of property when it is less than decretal amount. A. I. R. 1929 Pat 615=10 P. L. T 545=120 Ind Cas 765.

Para IX.

Redemption—A suit for recovery of property mortgaged from a mortgagee is one for redemption and is governed by this clause 1889 P. J. 58 ; 7 O. C. 152 ; 12 O C. 130 ; 4 A. L J. 275 ; 30 A 547 ; 20 M L. J 121 ; 12 M. L T. 439 ; 67 Ind Cas. 130 ; 3 Lah. L. J. 370 ; L R 3 A 628 ; 3 Pat L. T 813 ; see also 1925 M. W. N 747 ; 134 Ind. Cas 124 ; 132 Ind. Cas 317. In suits contemplated by section 7(ix) amount of mortgage money is determining factor in fixing Court fee. 134 Ind Cas 597=6 Luck 684=A I R. 1931 Oudh 366 ; see also A I. R. 1931 Oudh 353=8 O W N 836=134 Ind. Cas. 604 ; A I. R. 1931 Mad 479=60 M L. J. 698=132 Ind Cas. 317 ; A. I R 1931 Lah 633=32 P L R 591 ; A I. R 1931 Nag. 180 ; A. I. R. 1926 Lah 376=7 Lah 578 (F. B)=96 Ind Cas. 890 ; A. I. R. 1926 Mad. 667=95 Ind Cas. 26 ; A. I. R 1926 Oudh 346=3 O. W. N. 467 ; A. I. R. 1926 Mad. 542 ; A I R. 1925 Mad. 1254=91 Ind. Cas. 81 ; A. I. R. 1923 Lah. 568=5 L. L. J. 143=72 Ind. Cas 405 ; 45 A. 154=80 Ind Cas 1021;

s. 481 ;
Appeal
reliefs.
A. I. R. 1935 Pesh. 8.

Appeals.—This section has application only to suits and not to appeals. 27 A. 447 ; 30 A. 547 ; 36 A. 40 ; 29 M. 367. But in a suit for redemption or fore-
nt to redeem or
andum of appeal
is to say, will
34 Ind. Cas. 733=22 O. C. 289 ; 6 N. L. R. 164 ; 20 M. L. J. 120=3 Ind. Cas. 459 ; 88 Ind. Cas. 888=23 A. L. J. 853 ; 77 Ind. Cas. 1054 ; 67 Ind. Cas. 968=25 O. C. 30 ; 67 Ind. Cas. 130=3 Lah. L. J. 156. Court-fee payable on the memorandum of second appeal is to be calculated on difference between the sum alleged by the mortgagor as payable and the sum fixed by the Appellate Court. 55 Ind. Cas. 177.

Para X.

Sub-clause (a).—1923 Oudh 253 ; 45 M. L. J. 431 ; 73 Ind. Cas. 709 ; A. I. R. 1928 Lah. 635

Sub clause (c).—*Vide* 34 C. L. J. 34=25 C. W. N. 768 ; 15 Ind. Cas. 56 ; 66 Ind. Cas. 268—34 C. L. J. 94 ; 16 Ind. Cas. 963=16 C. L. J. 375 ; 4 Pat. L. J. 523.

Sub-clause (d)—Oudh S. C. 32. U. B. R. (1909) 2nd. Qr.

Para XI.

Notes—Where plaintiff in possession of part of a house wants to recover another part from his tenant, Court-fee on 12 times monthly rent would be reasonable. A. I. R. 1927 Sind 248=104 Ind. Cas. 412. In a suit for assessment of rent, there being no rent payable previously clause XI of s. 7 does not apply. A. I. R. 1927 Pat. 123=6 Pat. 17=8 P. L. T. 366=100 Ind. Cas. 913. Where suit asks for declaration of title and for relief against one of the defendants that he is a trespasser the suit not within s. 7 (xi). A. I. R. 1926 Cal. 504=91 Ind. Cas. 488. In a suit for ejectment, Court-fee payable is on a year's rental. 133 Ind. Cas. 689=54 C. L. J. 68=A. I. R. 1932 Cal. 6.

Sub clause (b).—A. I. R. 1934 Cal. 674=38 C. W. N. 527=61 C. 513.

Sub-clause (cc)—The Court-fee payable in a suit for ejectment from a house against a tenant is chargeable on one year's rent under this clause. 24 P. L. R. 1907 ; 1 L. B. R. 303 ; see also 2 A. L. J. 933 ; 27 M. L. J. 475 ; 39 M. 873=29 M. L. J. 572 ; 27 P. R. 1910=5 Ind. Cas. 910 ; 4 P. L. T. 666 ; 83 Ind. Cas. 1 : 24 C. W. N. 151 ; 93 Ind. Cas. 291 ; A. I. R. 1932 Cal. 6=54 C. L. J. 68=133 Ind. Cas. 689 ; A. I. R. 1933 Cal. 822 ; A. I. R. 1933 Pat. 664 ; 14 P. L. T. 616 ; A. I. R. 1931 Bom. 234 ; 33 C. W. N. 769 ; A. I. R. 1927 Mad. 568 Clause 11 (cc) does not apply to suit by tenant for recovery of property from trespassers. 126 Ind. Cas. 777=34 C. W. N. 217=A. I. R. 1931 Cal. 333. Court-fee is to be determined on nature of plaint. 34 C. W. N. 217=A. I. R. 1931 Cal. 333. When excess Court-fee has been realized by the appellate Court it should be refunded. 36 C. W. N. 190=A. I. R. 1932 Cal. 450. The valuation of a suit to recover possession of land from tenant is not its market value under s. 14 but one year's rent payable by tenant for year next before date of plaint under this clause. 39 M. 873=29 M. L. J. 572=18 M. L. T. 398=29 M. L. J. 572 ; see also A. I. R. 1927 Nag. 156=23 N. L. R. 5=10 N. L. J. 17. A tenant whose tenancy has been determined and is not a tenant holding over, is a trespasser. Suit for ejectment of such a tenant does not fall under s. 7 (11) (cc) A. I. R. 1928 Cal. 753=32 C. W. N. 1113=116 Ind. Cas. 374 ; see also A. I. R. 1925 Nag. 131 ; A. I. R. 1923 Nag. 310=74 Ind. Cas. 93. Where plaintiff instead of merely claiming to be landlord wants a declaration of title the suit will be governed by s. 7 (1) (c) and not by s. 7 (11) (cc) A. I. R. 1929 Mad. 529=29 M. L. W. 760=119 Ind. Cas. 577. S. 7 cl. (xi) (cc) is not confined to cases where defendant is estopped from denying plaintiff's title. If landlord sues a tenant for possession of immovable property, the Court-fee must be assessed under section 7 clause (xi) (cc) The fact that defendant denies relationship of landlord and tenant does not remove suit under s. 7, clause (xi) (cc) necessitating the rejection of suit and
title as landlord and consequent re-
ourt-fee can be got over by allowing
27 Mad. 331=52 M. L. J. 100=25 M.

L. W. 76=99 Ind. Cas. 981. "Holding over after determination of tenancy" covers case of tenant continuing in occupation even though tenancy has been determined. A. I. R. 1935 Pat. 90. When a suit is brought for possession of leased property on the ground that the tenancy has terminated by forfeiture the proper valuation is not the value of the immovable property, but the amount of the rent payable for the year next before the date of presentation of appeal. L. R 5 All 701. The tenancy of a tenant holding over is created by occupation under an implied demise or agreement. In a case where notice to quit has been given no demise or consent to continuance of occupation can be implied. The person continuing in possession after a notice to quit and demand for possession is liable to ejectment as a trespasser and the suit does not fall under this sub-clause. 20 N. L. R. 124. A suit to eject a *thicadar* on the expiry of his lease falls under this sub-clause 74 Ind Cas. 619=2 Pat. 260. Suit for possession on the ground of forfeiture is governed by this sub-clause 83 Ind. Cas. 1. Where a plaint seeks for declaration of title or against a tenant and also against a trespasser, the former portion of the relief falls under this sub-clause, but not the latter. 91 Ind. Cas. 488.

Sub-clause(d)—111 P. R. 1883 ; 23 M 84

Sub clause(e)—A suit by a tenant against the landlord falls under this sub-clause. The clause should not be limited to suits where the landlord and tenant alone are parties, it applies cases where to avoid delay etc. other persons also are impleaded. 87 Ind. Cas. 1002=A. I. R. 1925 Sind 275 ; see also 16 C L. J. 375 ; but see 32 C. 268.

Sub clause (f).—Suit for declaration that plaintiff is liable to pay *Achue Paltsha* at a rate lower than that claimed by the defendant does not fall within s. 7. cl. (1) or cl. (4) (e) or cl. (11) (f) as it is a suit for declaration without consequential relief. 79 Ind Cas. 343=46 M. L J 377.

Fees on memorandum of appeal against order relating to compensation.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

[illegible] paid on the memorandum of appeal [illegible] n the amount awarded and amount [illegible] V. R 1913 See also 1925 Pat. C. W. [illegible] inst award of compensation in a land [illegible] d is excessive, s 8 of the Court Fees [illegible] Cas 435=46 M L J 150=34 M L. T [illegible] against the award is governed by article [illegible] nd Cas 764=17 P. L R 1912 ; but see 78 [illegible] 92 Ind Cas 991 , 97 Ind Cas. 140. There [illegible] payable by the Secretary of State and the claimant [illegible] of State [illegible] not apply [illegible] 199 *Adv* [illegible] A. I. R. 1931 Lah. 342 see also 35 C. W N 1103=59 C. 528 ; 50 Ind. Cas. 470 ; 53 M. 48=A. I. R. 1930 Mad. 45 , 23 Bom L. R. 148 ; A. I. R. 1928 Rang. 197 ; 60 C. L. J. 216 A I. R. 1932 Mad 438 , A I. R. 1935 Lah 448

Power to ascertain nett profits or market-value.

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house or garden as is mentioned in section 7, paragraphs 5. and 6, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

NOTES.

[illegible] Court is not bound to appoint a [illegible] section 29A 749 ; 5 B L. R. 6. [illegible] nts and not to appeals. 12 A. 129 ; 29 A. 749. The proper course if the plaint is undervalued to admit the plaint on

memorandum and to take steps under s. 9 A. I. R. 1930 Cal. 65=50 C. L. J. 164=33 C. W. N. 952. Court cannot call upon appellant to produce evidence to substantiate the value which he has assessed upon the property in question. 49 C. L. J. 562=33 C. W. N. 845. If commission is ordered under s. 9 not at instance of plaintiff there is no power to make plaintiff deposit the costs of the commission. 33 C. W. N. 952.

Procedure where nett-profits or market-value wrongly estimated.

10. (i) If in the result of any such investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee : but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

(ii) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

* * * * * * * *

NOTES.

. . . not susceptible of restriction to any paritcular .. . ntiff can reduce his claim to bring suit within dismissed under s 10 (2). A. I. R. 1931 Mad. 716=34 M L. W. 252=1931 M. W. N. 677.

Clause 2—Either before or after the expiration of the time fixed by a Court for payment of additional fees by the plaintiff who has been ordered to pay the same, acting under cl. 2 of s 10 of the Court Fees Act, it is competent to the Court to enlarge the time fixed, on circumstances rendering it just and proper that such extensions should be given if ultimately the order is not complied with and additional fees not paid the Court should pass an order dismissing the suit and not one rejecting the plaint as under s 54 of the Civil Procedure Code. 19 A 240, P R. 84 of 1876. Until the appeal is admitted, it is not competent to the Appellate Court to pass an order dismissing the original suit under ss 10 and 11 for non-payment of Court-fee. 1 M. L. J 528.

A plaintiff is at liberty to withdraw any part of his claim to bring it within the Court-fees he had paid on his plaint and a Court is not bound to dismiss a claim, if a plaintiff instead of complying with an order for payment of deficient Court-fee abandons that portion of his claim which the Court had held to have been over-valued. 27 A. 151.

Time given by Court.—It is competent to a Court, after the expiry of the time initially granted, to enlarge the time for payment of the deficit Court-fees on a plaint upon payment of deficit Court-fees the suit must be taken to have been instituted on the day when the plaint was originally presented. 2 Ind. Cas. 1 ; see also 15 C. L. J. 120 ; 13 C. L. J. 78 ; 3 Ind. Cas 830

Suit—includes appeal. 15 Ind Cas. 463

Appeal.—*Vide* 1 A. L. J 392 ; 20 A 362 ; 28 A. 270 (F. B.) ; 7A. 528 ; 15 M. 288 ; A. W. N. (1905) 277 ; 1921 Pat 161 (F. B) ; 6 Pat. L. J 243 ; 4 Pat. L. J. 703 ; 5 P. L. J. 508.

Dismissal of a suit under ss. 10 and 11 has the same effect as a rejection of the plaint under s. 54 of C P. Code.—12 A 129 (F. B)=A. W. N. 1890, 39 ; 4 Pat. L J 703

This section allows a Court to dismiss a suit for non-payment of the additional Court-fee when it has jurisdiction to dismiss the suit 1927 Bom. 257 (b) ; see also 4 Pat. L. J. 703 ; 60 Ind. Cas 654.

Procedure in suits for mesne-profits or account when amount decreed exceeds amount claimed.

11. In suits for mesne profits or for immovable property and mesne-profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid

* Clause iii having been repealed by the Repealing and Amending Act (XII of 1891) has been omitted.

and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne-profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

Scope.—The word 'suit' in the last clause of para 2, s. 11, Court-Fees Act, does not mean the entire suit. It can fairly be construed as the suit or claim in respect of mesne profits 24 C. 173. The intention of the first part is that no time should be fixed for payment of extra Court-fee but the
extra fee is paid. 30 M 32, 59 Ind Cas. 3
Court-fee by reason of the accrual of interest [illegible]
A. I. R. 1927 Pat 230=8 P. L. T. 355=103 Ind. Cas. 592. Where lower Court decides less than claim amount, and High Court on appeal allows full claim with interest, no excess Court-fee need be paid. A. I. R. 1928 Pat. 58=8 P. L. T. 331=105 Ind Cas. 395. Court-fee on future mesne profits can only be levied after ascertainment. A I. R 1930 Rang 246=126 Ind. Cas. 224; see also 9 P. L. T 657=108 Ind Cas 801; 10 L. B. R. 276=13 Bur. L. T. 165=62 Ind Cas. 175; 142 Ind. Cas 617=13 P L. T. 10=12 Pat. 188=A. I. R. 1933 Pat. 81. In case of decree for possession with past and future profits, execution can be taken for possession whether Court-fee is paid in future profits or not. A I. R. 1931 Mad 717=61 M. L. J 424=34 M L. W. 99=54 Mad 980=134 Ind. Cas. 181. Where plaintiff was asked to pay additional Court-fee in suit for partnership account, and no mention is made in the final decree as to from which of the [illegible]
zed, executing Court has jurisdiction to
t it as costs relating to execution. 145
; M. L J 526=38 M. L. W. 572=A. I. R
ls against trial Court's decree awarding
claimed, no Court-fee in excess of fixed
fee need be paid until the profits are actually ascertained. 11 Pat. L. T. 703. This section does not apply to mortgage suits. No additional Court-fee need be paid in the case of a mortgage decree for a larger amount than claim amount. 3 Pat L. T 146=70 Ind Cas 483. On an application for mesne profits the Court-fee payable is an *advalorem* fee. 1 Pat L. T. 235=61 Ind Cas 425. Where in a suit for dissolution of partnership and its accounts, the decree is for higher amount, the plaintiff must pay Court-fees on the difference of the amount decreed and the amount on which Court-fee has been paid A. I R 1935 Lah 40. Court-fee is payable on future mesne profits but it can only be exacted after the amount has been ascertained by enquiry and the Court has no jurisdiction to dismiss such an application for non-payment of Court-fee in advance. 93 Ind Cas. 939

Enlargement of time.—The Court can extend the time originally fixed for payment of extra Court-fee. 13 C L J. 432; see also 1 A. L. J. 350; 24 O. C. 209.

Suit for account—is one in which the relief is by way of account 6 Bom. L. R. 1102.

Future mesne profits—No Court-fee is payable on future mesne profits. 20 M. L. J. 98. See also 33 C. 1232; 6 O. C. 351 But see 62 Ind Cas 175.

Suit for damage.—In a suit for damage offer to pay additional Court-fees if more damages are due is not barred 17 M L J. 625.

Para 2.—The final provision of this section does not apply to the conditions set forth in the first paragraph of this section. 11 Ind. Cas. 73.

Interest—on decree is not chargeable with Court-fees. 12 B. H C. 227

Part execution—of decree is allowed before payment of Court-fees under this section. 12 B. 98

Appellate Court—cannot extend time. 22 Ind. Cas. 890.

Interest pendente lite—There is no provision of law authorizing the assessment of additional Court-fee by reason of the accrual of interest *pendente lite.* 1917 Pat. 230.

12. (i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

Decision of question as to valuation.

(ii) But whenever any such suit comes before a Court of Appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph ii, shall apply.

Scope.—The correct meaning of this section is that the decision of the Court is final only as regards the actual appraisement of the suit and the determination of such question as relates directly and immediately thereto and that the question whether such Court was right or wrong in holding the suit to be one of a particular class does not relate directly or immediately to such appraisement and it is open to challenge on appeal. 49 Ind Cas 711 (F. B) ; 16 C. L. J. 371 ; 6 S. L. R. 72 ; 3 Pat. L. J. 443 ; 47 Ind. Cas. 7 ; 25 Ind. Cas. 506 ; see also 10 C. 599= 12 C. L. R. 148 ; 23 W. R 296 ; 1 A. 360 ; 28 C 334 ; 2 B. 219 ; A. W. N. 1903 214 ; 19 A. 165 ; 23 B. 486 ; 17 B 56 ; 15 B. 82 ; 10 B. 60 (F B) ; 4 M. 204 ; A. I. R. 1935. Mad. 927. The provision of this section should be strictly construed and the additional fee should be levied from a party-litigant only in exact conformity with the precise words of the statute. But the provisions in fiscal statutes should not be so construed as to furnish a chance of escape and means of evasio

But this section has no application to the case

to decided cases.

...sidered when valuing a suit. A. I. R. 1924 Cal. 969=40 C. L. J. 150=79 Ind. Cas. 982. Under valua-

fter registration. A. I. R.

Cas. 630 Section 12 does

...d. 136 Ind. Cas. 176=33 Bom L. R. 263=A I R 1931 Bom 234 Section 12 does not apply where appellate Court has to ascertain nature of suit and to determine whether it falls under particular category or not. 130 Ind Cas 643=32 P. L R 244=A. I. R 1931 Lah. 378. Question of sufficiency of stamp on memorandum of appeal is open until appeal is finaly disposed of. 144 Ind. Cas. 684=14 P L T 180=12 Pat. 694=A. I. R. 1933

eted and additional fee levied in

hance of escape or means of eva-

Ind Cas. 292. Decision of first

...ing category of suit and applicability of section is not final. A. I R 1924 Pat. 673=5 P. L T. 425=3 Pat. 930=80 Ind. Cas. 667 ; see also 39 C W. N. 131=60 C. L. J. 201 ; 16 P R. 1919 (F. B). Review by Court of its order for demand at the request of plaintiff or *suo motu* is permitted even though the order is final. A. I R 1924 Pat 673=5 P. L. T. 425=80 Ind. Cas. 667. Plaintiff must be allowed an opportunity to pay proper Court-fee on insufficiently stamped document before rejecting it. A. I. R. 1928 Lah. 221=106 Ind. Cas. 817 ; but see 3 L. L. J. 156=67 Ind. Cas. 136 Appellate Court can order payment of additional Court-fees only when appeal is registered. A. I. R. 1927 Cal. 775=31 C. W. N. 1045=106 Ind. Cas. 335. Formal decision of lower Court regarding sufficiency of Court-fees is not essential. *Ibid* ; but see 36 Ind. Cas. 957=10 Bur. L. T. 242. Appellate Court can order payment of additional Court-fee only before decision of appeal. A. I. R. 1929 Oudh 483=6 O W. N. 757 ; see also A. I. R. 1934 All. 805=1934 A. L. J. 957. Where plaintiff respondent fails to pay deficient Court-fee which he should have paid in trial Court, High Court may refuse to hear his counsel in second appeal. A. I. R 1929 All 577=117 Ind. Cas. 107=51

High Court can interfere in

of Court-fees. A. I. R. 1933

Order deciding whether addi-

...case decided within the meaning of s. 115 C. P. Code and is open to revision. 1933 A. L. J 311=55 A. 274=A. I. R. 1933 All. 350 ; see also A. I. R. 1931 Bom. 234=33 Bom. L. R. 263=136 Ind. Cas. 176.

Where Court-fee decision is favourable to plaintiff, even revision application by Government does not lie. 56 M. 744=65 M. L. J. 25=1933 M. W. N. 737=A. I. R. 1933 Mad. 506=38 M. L. W. 80. Order for realization of deficit Court-fee by attachment and sale of plaintiff's properties after dismissal of suit is illegal. 52 Ind. Cas. 435=46 C. 520 ; see also A. I. R. 1933 Mad. 321.

r whatever cause, the High he appeal. 4 Pat. L. J. 472. value with a view to deter- ves root questions of princi- ration of statutes on appeal against an order for payment of Court-fee is maintainable 51 C. 216=28 C. W. N. 683=39 C L. J. 212=81 Ind. Cas 763 Order rejecting plaint which necessarily involves a decision as to class of suit is appealable even though incidentally determines a question of valuation 4 Pat L. J. 57=49 Ind. Cas 442 ; see also 47 Ind. Cas. 7=44 Ind Cas 890 High Court must see that the Court-fees are paid to the High Court and in the Court below from which the case has come 3 P L J. 10=43 Ind Cas 489 ; 3 P. L J 443=49 Ind Cas 50 , 37 Ind Cas 133 Appellate Court can call upon party to make good deficiency in Court-fee in lower Court A. I. R. 1935 Lah. 698.

When once a document is admitted by the lower Court it is not for a party to say that the document should be struck off from the record. The Court is entitled to allow the other party on payment of the proper fee to rely upon the document 94 Ind. Cas 646 ; 23 Bom. L R 525 ; see also 91 Ind. Cas. 729. This section only applies to a decision as to the valuation of a suit which falls within a particular class and not to a decision as to the particular class in which a suit falls. If there is no doubt as to the class in which a suit falls and the section of the Court Fees Act which applies to it, the decision of the First Court as to valuation which depends on the value of the property in suit, is final. But if there is a dispute as to the class in which a suit falls, an appeal will lie 87 Ind Cas 911=A. I R. 1925 Nag. 435. A decision as to the category to which a suit or appeal belongs is not final. 87 Ind Cas. 660=A. I. R. 1925 Mad. 713=48 M L. J 688 , see also 6 Pat L T. 448=90 Ind Cas. 321 An order by a trial Court wrongly assessing Court-fee is not subject to appeal 26 P L. Court" in the section do not mean that he Court All that they mean is that the sterial officer who is charged with that duty, has to determine what the Court-fee is 19 M L. J. 608=1926 Mad. 96. An order directing Court-fees to be paid and granting time to pay it is not revisable. on matter of Court- A. I R 1935 Cal 338 t is filed Suit need

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure,* is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section 351 † of the same Code, for a second decision by the lower Court, the appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Fee paid on memorandum of appeal

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Notes —For refund under this section of the Court-fee paid on an appeal from an order rejecting a plaint under s 113 Civil Procedure Code—*Vide* 16 M L J. 30 ;

* This reference should now be read as applying to Act V of 1908—See s. 158 of that Act.

† The reference to s. 351 of the Code of Civil Procedure, (Act VIII of 1859) should now be read as applying to order 41, rule 93, Act V of 1908.

see also 15 C. L. J. 658 ; 5 A. L. J. 543 ; 14 W. R. 47 ; 6 W. R. Mis. 65 ; 4 B. L. R. Ap. 96 ; 14 A. L. J. 671 ; 28 Ind. Cas. 300 ; 3 Pat. L. J. 67 ; 83 Ind. Cas. 829. Dismissal of a suit on inadmissibility of document is a preliminary point. 1927 Lah. 592. The Court-fee is refunded if remand is under Order 41, r. 23 of the Civil Procedure Code. 1927 Lah. 196. Jurisdiction to order refund of Court-fee irrespective of ss. 13, 14 and 15 exists. 7 Luck. 588=10 O. W. N. 292=A. I. R. 1933 Oudh 170 ; see also 38 C. W. N. 185=A. I. R. 1934 Cal 615 ; 170 Ind. Cas. 825 In the case of remand under order 41, rule 23 refund of Court-fees is mandatory but discretionary if the remand is made under s. 151. A. I R. 1930 Lah. 441=122 Ind. Cas. 485 ; see also 1934 M. W. N. 1070=151 Ind. Cas. 721=A. I. R. 1934 Mad. 643 ; A. I. R. 1927 Lah. 592=103 Ind. Cas. 298 ; A. I. R. 1935 Pesh. 8 ; A I. R. 1926 Nag. 265=92 Ind. Cas. 926 ; 36 Ind. Cas. 241=12 N. L R. 126 ; 140 Ind. Cas. 56=54 All. 1031=1932 A. L J. 745=A. I. R. 1932 All. 641 (F. B.) ; A. I. R. 1933 Lah. 47= [illegible] the disposal of suit was on merits and Court-fee was ordered remand is one [illegible] r 41, rule 23 and s. 13. A. I. R. 1933 Lah. 135=34 P L. R. 270=141 Ind. Cas. 400. High Court can order refund of Court-fees paid in excess. But it is for revenue authorities to decide whether to pay. A. I. R. 1932 Mad. 438=62 M. L. J 541=1932 M. W. N. 420=55 M. 641=139 Ind. Cas. 131. The expression "lower Court" includes Court of first instance 140 Ind Cas. 466=54 A. 523=1932 A L J. 320=A. I R. 1932 All. 550. Section 13 is not applicable to a case of appeal against preliminary decree but applies to a remanded suit which the original Court has disposed of on a preliminary point. 4 Pat. L. W. 100=3 Pat L J 116=43 Ind. Cas 855. Where the decree in favour of the respondents is set aside wholly or in part the section applies provided the decree is reversed against all respondents. 14 A. L. J. 671=39 Ind Cas. 28 ; see also A. I. R 1932 All 550=54 A 523=1932 A L J 320 Court can order refund of excess *Court-fee paid under a bona fide mistake* 9 *P. L. T.* 240=*107 Ind. Cas.* 320. Where appeal was dismissed for default in payment of additional Court-fee, Court-fee already paid cannot be returned. A. I. R. 1928 Pat. 29=105 Ind Cas. 742=6 Pat 602=9 P. L. T. 337 ; see also 105 Ind. Cas. 740=A. I. R. 1928 Pat. 35=6 Pat. 599 Refusal to grant a certificate for refund of Court-fee on remand of appeal, is a material irregularity within the meaning of s. 115 C. P. Code. 42 B. 363=20 Bom L. R 348=45 Ind. Cas. 552. Where remand by Appellate Court for retrial of a case does not come within order 41, rule 23, order for remand cannot be granted. 42 Ind Cas 304 Only the District Collector can grant refund of excess Court-fee paid in appeal to the High Court 57 Ind. Cas. 26. In case of remand in second appeal on preliminary point, refund of Court-fee is allowed. A I. R. 1931 All. 106 (F B)=1934 A. L J. 41=56 A 526

Refund of fee on application for review of judgment.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

Object—The apparent intention of this section is to require full stamp in every case of delay after the eighty-ninth day from the date of the decree, and to permit a refund at the discretion of the Judge when the delay is not due to the appellant's laches. 9 M. 134, 9 C L R. 479 ; 39 C. L. J. 344. The provision of *section 5 of the Limitation Act is not applicable to extend the period.* 15 *C. L. J.* 505.

Refund where Court reverses or modifies its former decision on ground of mistake.

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the [application] * as exceeds the fee payable on any other application to such Court under the second schedule to this Act No. 1, clause (*b*) or clause (*d*).

* The word has been substituted by Act XX of 1870.

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

Notes.—In order to attract the operation of this section the conditions requisite are that there should be an application for review of judgment, that it should have been admitted, that on the re-hearing the Court should have reversed or modified its former decision on the ground of mistake in law or fact and that such reversal or modification was not due to fresh evidence which might have been produced at the original hearing. 28 C. W N. 918 ; see also 31 A. 294 ; 73 P. L. R. 1916 ; 1925 Pat C. W N 65 ; 84 Ind. Cas. 278, 10 Pat. 649=13 P L. T. 284=A I. R 1932 Pat. 86 ; A. I. R. 1930 Cal 631 ; but see A. I. R. 1929 Rang. 158=7 Rang. 88=117 Ind Cas. 585

16. [Repealed by Act V of 1908, Sch V.]

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Multifarious suits.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section 9. *

Scope—This section is applicable only to a case where cumulative relief is sought by the plaintiff 15 B 82 ; but see 30 M 61 , 16 M. L J 462 ; 11 O C. 173 ; 47 Ind. Cas 886 , 44 Ind Cas 143. This section applies only to suits. 23 C 723 (F. B.), see also 10 C. 617 A. 528 ; 13 C L. R. 156. The principle of consolidation applied by s 67 T. P. Act has no bearing upon the interpretation of s 17, Court Fees Act. A. I. R. 1935 Mad. 262.

Distinct Subjects.—Distinct subjects mean distinct and separate causes of action. 2 A 676 ; 1 A. 552 ; see also 16 M. 415 ; 7A 761 , 9A. 257 ; 29A. 155 ; 27 A. 186 ; 5 L. B R 94 (F B) ; 16 A. 491 ; 5 Lah 114 , 29A 190 ; 18 M. 459 ; 2 A 682 ; 1887 P. J. 8 ; 36 B 628 ; 8 Bur. L T 217 (F. B.) ; (1922) Pat. 79 , 78 Ind. Cas. 915 ; A. I R. 1928 Pat. 274. The word "subject" is of somewhat uncertain connotation and is not capable of any precise definition. 45 M. L J. 431. The ordinary meaning of the word "subject" when used in law is a thing or matter, over which right is exercised and the two mortgages are distinctly two matters 2 Pat L T 546. The word, 'subject" means causes of action. 78 Ind Cas. 415 Claim for possession and claim for damages for use and ... T 60 ; see also ... is illegal and for ... suit for declara- ... 1930 Cal 686. In a suit for money due on a promissory note against legal representative of the promisor or in the alternative against a person actually receiving the consideration, ... A I. R 1930 Nag 55=120 Ind. ... eals may be consolidated for the ... ch appeal must be paid according ...) Cal 135=32 C. W N. 776=117 Ind Cas. 692 In suit for possession and mesne-profits against different defendants separate suits need not be filed and Court-fee paid on entire claim in respect of a single right was proper. A I R 1928 Pat 274=7 Pat 402=9 P L T 199=110 Ind Cas 191 Where in an appeal appellant seeks relief with respect to costs independently of main relief, *advalorem* Court fee must be paid on costs decreed 3 P. L J. 443=44 Ind Cas 50 In the case of reliefs claimed in the alternative with reference to same cause of action or some claim made on distinct or alternative grounds separate Court-fee need not be paid But distinct reliefs do require separate Cour fee A I. R 1924 Nag 169=78 Ind Cas 703 ; see also 50 Ind Cas. 470=4 P. L J 195=A. I. R 1922 Pat 359 In the case of suit for redemption of usufructuary mortgage s 17 does not apply. A I R. 1922 Nag 259=68 Ind Cas.

* The reference to s 7 of the Code of Civil Procedure (Act VII of 1859) should now be read as applying to Order II, rule 6 of Act V of 1908—*Vide* s 158 of that Act.

226. But two mortgages executed by same mortgagor in favour of one person and in respect of same properties are distinct subjects and s 17 applies. 2 Pat 874= . . . Ind. Cas. 820 ; see also 57 Ind Cas. . n a *khata* comprising number of items, A I R. 1922 Bom. 376 (F. B)=46 B. . . . a suit for declaration against several . . . Court-fee on claim on each holding must be paid 4 Pat L. J. 299=51 Ind. Cas 767. Where the first mortgage is with possession, subsequent mortgage on same conditions simply increasing amount secured does not constitute second alienation. 142 Ind. Cas 641=A I. R. 1933 Lah. 382 ; see also A. I. R. 1932 Mad. 737=63 M. L. J. 316=1932 M. W. N. 986 Fresh Court-fee must be paid for fresh cause of action. A. I. R. (1931) Mad 533=1931 M. W. N. 390. Suit for recovery of three distinct deposits is a suit embracing three distinct subjects. A I. R. 1931 Mad. 712=61 M. L. J. 680=34 M. L. W. 378 ; see also A I R 1933 Mad. 178=1933 M. W. N. 215=65 M L J. 252. As regards what are not "distinct subjects" *vide* A. I. R. 1933 Sind 343 ; A. I. R. 1932 Mad. 667=63 M. L J. 73.

Suits for possession and mesne-profits.—The claim in such a suit is to be regarded as one entire claim 8 C. 593 F. B =10 C. L. R. 359 ; 16 A. 401 ; see also 3 A 131 ; 56 Ind. Cas. 883 ; 4 Pat. L. J. 195.

Subject to maximum limit.—The aggregate of the Court-fee payable in respect of each matter should be paid but it is subject to the maximum limit under Art. 1 of sch I. 3 A. 188 ; 29 C. 143.

In a suit on a *khata* computation of Court-fees should be made on the balance due and not on each separate item. 23 Bom. L R. 995.

In a suit by a landlord against 25 sets of tenants in respect of 25 holdings for a declaration that their several lands were held under the *batai* system, and that they were wrongly recorded as paying cash rent, *held*, that a Court-fee of Rs. 10 should have been paid in respect of each of the 25 sets of tenants. 4 Pat. L. J. 299.

Two mortgage bonds.—Where the plaintiff brings a suit on the basis of two mortgage bonds in which the same properties are hypothecated he has to pay *advalorem* Court-fee on the amount due under each of the two bonds separately and not on the total claim 1 P. L T. 444 ; 4 P. L. T 546.

A suit for redemption of mortgage and surplus collection need not be valued separately The surplus profits need not be valued at all 68 Ind. Cas. 226

Where three declarations were sought arising from distinct causes of action, three times the Court-fee should be paid 75 Ind. Cas 597.

In suit for partition and joint possession, the plaintiff is bound to pay the fixed fee for partition in addition to the *advalorem* fee as in a suit for possession. 81 Ind. Cas. 1052=3 Pat 618 Separate Court-fee is payable in a suit for land or for refund of consideration. 1924 Nag. 169 Where a plaint prays for one of two reliefs in the alternative based on one cause of action, the larger of the two reliefs determines the value of the claim and this section does not apply. 8 Lah L. J. 449=96 Ind. Cas. 826=1926 Lah. 461.

Written examinations of complainants.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure,* the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

Exemption of certain documents.

19 Nothing contained in this Act shall render the following documents chargeable with any fee :—

(i) Power of attorney to institute or defend a suit when executed by an officer, warrant-officer, non commissioned officer or private of Her Majesty's army not in civil employment.

* This reference should now be read as referring to the Code of Criminal Procedure (Act V of 1898)—See s. 3 (1) of the Act.

ii. [*Repealed by the Repealing and Amending Act, 1891 (XII of 1891)*].

iii. Written statements called for by the Court after the first hearing of a suit.

iv. [*Repealed by the Cantonments Act, 1889 (XIII of 1889)*].

v. Plaints in suits tried by Village Munsifs * in the Presidency of Fort St. George.

vi Plaints and processes in suits before District Panchayats in the same Presidency

vii Plaints in suits before Collectors under Madras Regulation XII of 1816.

viii. Probate of a Will, letters of administration, "and, save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827",† where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

ix. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of ... ected with the assessment of land or the ... iterests therein, if presented previous to the ...

x. Application relating to a supply for irrigation of water belonging to Government.

xi. *Application for leave to extend cultivation, or to relinquish land,* when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

xii. *Application for service of notice of relinquishment of land* or of enhancement of rent.

xiii Written authority to an agent to distrain.

xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

xvi. Petition, application, charge or information respecting any offence when presented, made or laid to or before a Police-officer, or to or before the Heads of Villages‡ or the Village Police§ in the territories respectively subject to the Governors in Council of Madras and Bombay.

xvii Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

xviii. Complaint of a public servant (as defined in the Indian Penal Code),‖ a municipal officer, or an officer or servant of a Railway Company.

xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests

xx. Application for the payment of money due by Government to the applicant

xxi *Petition of appeals against the chaukidari assessment under Act No.* XX of 1856, or against any municipal tax.

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* See the Madras Village Courts Act (I of 1889).

† The words quoted have been substituted for the word, "and certificate mentioned in the First Schedule to this Act annexed, No. 12" by the Succession Certificate Act (VIII of 1889) s 13 (2).

‡ See Mad Regs. XI of 1816 and IV of 1821 s 6.

§ See Bombay Village Police Act (VIII of 1867) ss. 14, 15 & 16.

‖ XLV of 1869

xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.*

xxiii Petitions presented to the Special Commissioner appointed under Bengal Act No. II of 1869 (*to ascertain, regulate and record certain tenures in Chota Nagpur*).

xxiv. † Petitions under the Indian Christian Marriage Act, 1872,‡ sections 45 and 48.

Clause (iii)—A written statement in which a set-off is claimed is chargeable with Court-fee. 10 C. W. N. 199 ; but see 8 C. W. N. 174. Where defendant does not allege any definite sum to be due to him and does not pray for passing any decree therefor but merely pleads that he is entitled to get from the plaintiff damages arising out of the transaction on which plaintiff's claim is based it is not chargeable with Court fee. 85 P. R. 1908 This clause is applicable to written statement in miscellaneous case as well 1934. A. L. J. 881=A. I. R. 1934 All. 332.

to pay Court-fees provided in this
lue does not exceed one thousand or
W. N. 21 ; but see 40 A. 279. When the estate is held to be exempted from Court-fee if the nett value is less than Rs. 1,000 40 A 279 ; 46 Ind. Cas. 865.

Advalorem Court-fee as provided by Sch. I., Art. 11 must be paid befor letters of administration can be granted to the estate of a Hindu governed by the *Mitakashara* law. 29 C. W. N. 372.

Clause (xvii)—A petition of appeal presented by a legal practitioner on behalf of a prisoner in goal need not bear a Court-fee stamp 14 N. L R. 77 ; 45 Ind. Cas. 158 ; 19 C L. J 494 ; 65 Ind. Cas. 553=23 Cr. L J 121 ; 25C L. J. 277. Adjournment application by advocate on behalf of a prisoner, though for advocate's personal convenience. need not be stamped. A. I. R. 1930 All. 261=1930 P. L. J. 682=126 Ind. Cas. 827.

No Court-fee is leviable on the memorandum of appeal against an order rejecting an application by a judgment-debtor whilst in custody, to be declared an insolvent. 10 C. 61

Copies of documents for purpose of appeal in criminal cases are not exempted from payment of Court-fees. 6 Mad. App. H C. R. 12.

portion of money deposited
II, Art. 1 and is not an appli-
27 C. W. N. 646=1923 (Cal) 599. Application for refund of Court-fee is not chargeable. 142 Ind. Cas. 16=54 A. 790=1932 A. L J. 601=A. I. R. 1932 All. 590.

CHAPTER III A||

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

Relief where too high a Court-fee has been paid.

19A. Where any person on applying for the probate of a Will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a Court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters

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* *See the Land Acquisition Act (1 of 1894).*

† This clause has been substituted for the original by the Indian Christian Marriage Act (XV of 1872) s. 2. The original clause ran as follows : petitions under the 14th and 15th of Vict. Ch. 40 (*An Act for Marriages in India*) s. 5, or under Act No. V of 1852, s. 9.

‡ XV of 1873.

§ For further exceptions see Notification No. 4650. dated Sept. 10, 1889 in Appendix, p. 74.

|| This chapter has been inserted by the Probate and Administration Act (XIII of 1875) s. 6.

to the Chief Controlling Revenue Authority "for the local area"* in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(*a*) cancel the stamp on the probate or letters if such stamp has not been already cancelled ;

(*b*) substitute another stamp for denoting the Court fee which should have been paid thereon ; and

(*c*) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

Notes.—There is no grant of probate until the Court-fee is paid and the grant is issued to the party. 38 M 988=29 M. L. J 680. "The sum charged upon a grant of probate or of letters of administration, is not a tax or duty levied upon the property upon which the probate or administration operates, and it is not charged thereon as is Estate Duty in England, but it is merely a fee levied for the work done in this connection. And I do not think that this is any less the case because the fee is levied upon the value of the property." *Per Greaves J.* in 27 C. W. N. 812 at p. 815.

19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less Court fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

Relief where debts due from a deceased person have been paid out of his estate.

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

Notes.—Whenever it is proved to the satisfaction of the Chief Controlling Revenue Authority for the local area, in which the probate or letters of administration has or have been granted that an executor or administrator has paid debts due from the deceased an abatement in Court-fees should be allowed. 1 B. L. R. App. 43=16 W. R. 252 ; 6 N. W P. 214 ; 1 B. 118.

19C. Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Relief in case of several grants.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Scope.—No further Court-fee is leviable on a subseqnent grant of letters administration under s 229 of the Indian Succession Act, in respect of an unad-

* The words quoted were substituted for the words "of the province" (X of 1901) s. 3.

tered portion of the estate, although the value of the property might have increased in the meantime. 4 L. B. R. 225. See also 1 S. L. R. 117. This section merely means that when fees have already been paid in respect to the whole or part of the property comprised in the estate of a deceased person no fees shall be payable on the grant of a fresh probate of a Will or letters of administration of the estate of the same person, *e. g*, when probate is revoked or a portion of an estate remains unadministered. made *de bonis non*, there is , fresh Court-fee need not be I Cas 759.

Full fee chargeable under this Act—as stated in this section is to be determined by reference to the point of time when the grant of probate is made. The expression "under the same Act" in this section refers to the Court Fees Act of 1870, and not the subsequent Act amending the Court Fees Act. 22 C. L J. 370. No fresh fee is chargeable in case of a fresh grant. 16 W. R 253=8 B. L. R. App. 43; 6 Pat. L. J. 411=62 Ind. Cas. 513; 4 L. B. R. 255; 5 L. B. R. App 139; 3 Rang. 90=A. I. R. 1925 Rang. 215; 6 B. L. R. App. 137=21 W. R. 246; 3 C. 733; 6 B. L. R. App. 138.

Probates declared valid as to trust property though not covered by Court-fee.

19 D. *The probate of the Will or the letters of administration of the* effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring, or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially, as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a Court fee was paid on such probate or letters of administration.

Scope—Property held in a beneficial interest is exemp estates from the payment of on the circumstances that there had been a previous grant of probate or letters of administration on which a Court-fee had been paid. The exemption is referable to the character of the property and not to the procedure adopted. 29 B. 191; 23 C. 980; 7 B. L. R. O. C 57; 12 B L. R. App. 39; but see 27 B 140. This section has no application to question as to whether Court-fee is necessary. A. I. R. 1935 All. 449.

Property belonging to the Joint H bate, whereby the testator devised t Exemption was claimed on the ground property. *Held* that the whole of the much as the parties claiming under t 245; see also 5 P. L J. 510; but see tration no Court-fee need be paid. 25 Bom L R. 1240.

J. 611=45 Ind. Ca *Chandra Deo Dha* held in trust not exempt from *adval* *advalorem* Court-fe previous grant of p paid. The exempt procedure adopted. *Collector of Khaira v Chunilal*, 29 B. 161=6 Bom. L. R. 652; *In the goods of Pokurmull Agarwala*, 23 C. 980=1 C. W. N. 31; *In the goods of Bresford*, 15 W. R. 456=7 B. L R. 57; *In Bonis Brindaban Ghosh*, 11 B L. R. App. *Joymoney Dassi*, 14 B L. R. 184; but see *Collector* 3. 140=5 Bom L R. 974; *In the matter of Dasa* M. L. J. 591=6 M. L. T. 286=4 Ind. Cas 1064; *gunait*, 29 C. 372 S. C. on appeal 29 C. W. N. 879

=52 C. 871=95 Ind. Cas. 529=1925 A. I. R. 120. (Cal.) A Hindu father and his brother and two sons lived together in a joint *Mitaksara* family. The father died intestate leaving certain money in a bank. The brother and the two sons applied for letters of administration with a certificate from the Registrar who as the Taxing Officer (under R. 4 of Chapter XXXV of the Rules and Orders of the Calcutta High Court) certified exemption of Court fees as "the property was held in trust not beneficially or with general power to confer a beneficial interest." On reference to *Ghosh J.* exemption was refused, (*vide* 29 C. W. N. 872) but on appeal the decision was reversed on the ground that the decision of the Taxing Officer under rule 4 of Chapter XXXV is final by virtue of section 5 of the Court Fees Act. However the Court in delivering the judgment also entered into the merit of the case and observed: "Several questions of difficulty and importance arise upon the merits of the present application. Notwithstanding the decision *In the goods of Pokurmull Agarwala*, 23 C. 980 upon a reference by the Taxing Officer in any future case similar to the present to consider whether in view of the difficulties and divergence of opinion disclosed by subsequent decisions of other Courts [*Vide Bank of Bombay* v. *Ambalal Sarabhai*, 24 B. 350; *Collector of Ahmedabad* v. *Savchand*, 27 B 140; *In the goods of Manavilla Chetty*, 33 M. 93 (95), *Kashinath* v *Gouravabai*, 39 B 245; *Keshavalal* v. *Collector*, 48 B. 75=25 Bom L. R. 1240=77 Ind Cas 749], he should refer it to the Chief Justice. There has been and there is likely to be a continuous increase in the number of cases in which shares, Government Securities and Bank accounts belonging to *Mitakshara* joint families stand in the name of one member. It is plain that futher provision by the legislature is imperatively required to solve the difficulties which arise in making title to such property upon the death of holder. Decisions given upon reference under section 5 of the Act or in appeal from the District Courts acting under section 19 I can not be expected to put this matter on a proper basis." Note (a)—*In the goods of Gladstone*, 1 C 168, *In re Gasper*, 3 C. 736; *In the goods of March*, 4 C. 725, *In the goods of Froechman*, 20 C. 575; *In the goods of Abdul Aziz*, 23 C 577; *In the goods of Pokurmall Agarwala*, 23 C. 980; *In the goods of Ramchunder Ghose*, 24 C 567; *In re Ezekiel Joshua Abraham*, 21 B. 137; *In the goods of Sir Albert A D. Sasoon*, 21 B 673. See also *In the goods of Manavalla Chetty*, 33 M. 93, 95 "In those cases it was held that no Court-fee was required to be paid But see *Re Estate of Ram Kumar Prasad*, 5 Pat L J 510=58 Ind. Cas 1007=1 Pat L. T. 710. In *Kesavalal* v *Collector of Ahmedabad*, 48 B 75=77 Ind Cas. 749=25 Bom L. R 1240; the views expressed in *In the goods of Pokurmull Augurwallah*, 23 C. 980=1 C. W. N. 31 and in *Collector of Khatra* v. *Chunilal*, 29 B 161=6 Bom L. R 652 were followed Deposit in a private fund is not exempt from Court-fees when application is made for letters of administration to estate of a deceased depositer as the company is not a trustee for the nominee of [illegible] 312=6 Rang 558=116 Ind Cas 467 Where a [illegible] his wife and nephews and sons jointly and pro- [illegible] the property during her life-time, and after her the nephews were to get possession, and on her death the nephews applied for limited letters of administration and claimed exemption of Court-fee under s 19 D. *Held*, that the widow was an executrix with life interest in the property and was cotenant with the claimants and was not a trustee in respect of their share and therefore the applicants were not entitled to exemption A. I. R. 1928 Bom 55=52 Bom. 188=30 Bom. L R. 54

Provision for case where too low a Court-fee has been paid on probate, &c

19E.* Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a Court-fee thereon, the Chief Controlling Revenue-Authority "for the local area" † in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full Court fee which ought to have been

*As to power of Chief Controlling Revenue-Authority to remit the whole or part of any penalty or forfeiture payable under s. 19 E, see the Probate and Administration Act (VI of 1889) s. 20 (2)

†The words quoted were substituted for the words "of the province" by Act (X of 1889) s. 3.

originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper Court-fee, without any deduction of the Court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a Court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper Court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Scope—This section contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped. The section further contemplates that the estimated value of the estate is less than what the value afterwards proved to be. Where there is no determination of value by the Probate Court the section has no application. 23 C. L. J. 375; 1896 P. J. 251; 43 C. 230=20 C. W. N. 375.

Administrator to give proper security before letters stamped under section 19E.

19F. In case of letters of administration on which too low a Court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained

Executors, &c., not paying full Court-fee on probates, &c., within six months after discovery of under-payment.

19G.* Where too low a Court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months... .....† after the discovery of the mistake, or any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the Court fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper Court fee.

Notes—This section is moulded on s. 43 of 55 Geo. III, Ch, 189 and s 122 of 56 Geo III, Ch. 56. 22 C. L. J. 375 The question whether a certain property is or is not a trust property comes under section 19 (1) and an Order in respect of it by a Financial Commissioner under s 19(g) without proceeding under s. 19 (h) is *ultra vires*. A. I. R. 1928 Lah. 946=111 Ind. Cas 692

Notice of applications for probate or letters of administration to be given to Revenue authorities, and procedure thereon.

19H‡ (1) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector

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* As to recovery of penalties or forfeitures under s. 19G, see the Probate and [illegible]

[illegible] of April 1875" repealed by the [illegible] been omitted.

[illegible] after 19G by the Court Fees [illegible]H having since been repealed by [illegible] Sch.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue-Authority "for the local area in which the High Court is situated."*

(3) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent), and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by the section 277 of the Indian Succession Act, 1865,† or, as the case may be, by section 98 of the Probate and Administration Act, 1881.‡

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorised by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property The person authorized as aforesaid to hold the enquiry shall return to the Court the evidence taken by him, and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue-Authority of any application under section 19E.

(8) The local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

NOTES.

Costs of enquiry.—It is not stated by whom the cost of the enquiry should be borne. It is the duty of the Court to hold the enquiry and if possible to save further expense 6 C. W. N. 898. In a later Calcutta case it was held that under this section, a proceeding merely decides a revenue dispute between the Collector and the holder of the probate and as such the Court has no power to award cost. 50 C 239

Clause (4)—The six months provided in clause (4) run from the lodging of an inventory as required by s 98 of the Probate and Administration Act, and no inventory satisfies the statutory requirement which does not contain a full and true estimate of all the property in possession 18 C W N. 153 (P C)=41 C 556 (P C.); see also A. I. R. 1934 Oudh 72=11 O. W. N 78=9 Luck. 370 The grant of probate to petitioner cannot be delayed because the Collector has not made the

* The words quoted were substituted for the words "of the province" (X of 1901) s. 3.

† Act X of 1865.

‡ Act V of 1881.

motion under s. 19 H (4). 40 Ind. Cas. 576. It is right to levy Court-fee on the value of all the assets, whether in the province where probate was granted or outside. A. I. R 1924 Cal 115=27 C. W. N. 812=50 C. 597=75 Ind. Cas. 466. Refusal to consider applicant's allegations regarding erroneous inclusion of property is a ground for revision under s. 115. A. I. R. 1925 Cal. 357=78 Ind Cas. 901. If shares are entered into joint names of husband and wife they became wife's property on the death of husband. A. I. R. 1934 Oudh 72=11 O. W. N. 78=9 Luck. 370.

Notice of Application to Revenue-authorities—By section 19H notice of every application for probate or letters of administration has to be given to the Chief Controlling Revenue-Authority and means are provided whereby the revenue authorities may check valuations and recover the proper fees. *In the goods of the Bhubaneswar Trigunait*, 29 C. W. N. 879=52 C. 878=95 Ind. Cas. 529; see also *In the goods of Stevenson*, 6 C. W. N. 898 The cost for such an enquiry can- ...idoy Mohini v. Secretary of State, 50 C. 239= ... of section 19H of the Court Fees Act the ... hold an inquiry into the true value of the property. The finding of the Probate Court recorded under clause (4) of the section is final under clause (7) of the same section. *Chainmatha v. Secretary of State for India*, 78 Ind Cas. 901=1925 A I. R. 347 (Cal). But the Collector cannot make any such motion after the expiration of six months from the date of the lodging of the inventory required by the Succession Act. *Rajkumary v. The Collector of Gaya*, 41 C. 446=18 C W. N 135=19 C. L. J 136=21 Ind. Cas 915

Payment of Court fees in respect of probates and letters of administration.

19 I* (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub section (4).

Notes—Sub-section (1) provides that no order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant, until the petitioner has filed in Court a valuation of the property in the form set forth in the first schedule and the Court is satisfied that the fees mentioned ... paid on such valuation 39 C. L. J. 209; ... 5 C W.-N. cclıv; 43 C 625; 43 C. 230; ... V. N 78=9 Luck. 370. No Court-fee need ... Cas. 128. On a petition for letters of administration for part of property Court-fee on the value of the whole property cannot be levied, 19 Ind. Cas. 620. Probate fees are payable under the Act in force on date of grant. 1926 Bom 643. Date for valuation of estate is date of application for probate. Court-fee paid by applicant may be revised subsequently. 14 Lah. 526=A. I. R. 1933 Lah. 936; but see A I. R. 1927 Bom 643=29 Bom. L. R. 1511=106 Ind. Cas. 66 An executor can not be compelled to pay probate duty until the Collector has finished his work with regard to valuation of the property. A. I. R. 1929 Cal 733 On a petition for letters of administration for part of property Court-fee on the value of the whole property can not be levied. A. I. R. 1925 Lah. 493=7 L. L. J. 288=26 P. L. R. 608=90 Ind. Cas 620. Compliance with s. 191 is necessary before a Hindu co-parcener can get letters of administration to property claimed by him by right of survivorship. 29 C. W. N. 372=94 Ind. Cas. 986=A. I. R. 1925 Cal. 627.

Recovery of penalties, &c.

19J.* (1) Any excess fee found to be payable on an inquiry held under se... fc... tificate of the Chief Controlling ... cutor or administrator as if it ... in any part of British India.

*See foot-note (‡) p 510.

(2) The Chief Controlling Revenue-Authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E or of any Court-fee under section 19E in excess of the full Court-fee which ought to have been paid.

Notes.—There is no provision in the law for recovery of the penalty by summary process as section 19E is not mentioned in sub section 1 of section 19 J. 20 C. W. N 404=43 C. 230=22 C. L. J. 375=31 Ind. Cas. 460.

Sections 6 and 28 not to apply to probate or letters of administration.

19K* Nothing in section 6 or section 28 shall apply to probates or letters of administration

CHAPTER IV.

PROCESS-FEES.

Rules as to cost of processes

20.† The High Court shall, as soon as may be, make rules‡ as to the following matters :—

; issued by such

C nd Revenue" §

C

(ii) the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant ; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

Confirmation and publication of rules

All such rules, alterations, and additions shall, after being confirmed by the the Local Government ‖ * * * * be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

Notes—The High Court has no powers to relax the process-fee under the rules framed by it in accordance with the provisions of this Act 26 C. 124=3 C W. N. 82.

A commission, issued to make local investigation is not a process within the meaning of this section. 17 C. 281. Process for notice to respondents in appeal before Special Judge must be paid according to rules under s. 20 132 Ind. Cas. 683=35 C. W N. 253=58 C. 995=A I R 1931 Cal. 572. Court has no power to consolidate a number of revision petitions so as to enable a party to pay one process-fee for the common respondents and file a vakalatnama A. I. R 1930 Mad. 381 (F. B.)=58 M. L. J. 521=53 Mad 262=123 Ind Cas 606.

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* See foot-note (1) in page 510.

† This section is not in force in Burma—*Vide* Bur. Act 1 of 1910. s. 2.

‡ As to the power to make rules and prescribe fees for processes in Lower Burma see the Lower Burma Courts Act (XI of 1889), ss 89 and 91 ; now see Act (VI of 1900) As to the power of the Judicial Commissioner to make rules and regulate the fees to be paid for civil processes in Upper Burma see the Upper Burma Civil Courts Regulation (1 of 1869), s. 30 (1) (*a*). As to the power of the Bombay High Court to prescribe fees for processes issued by Courts constituted under the Bombay Civil Courts Act (XIV of 1869). see sec. 42 of that Act.

As to the power of the Chief Commissioner of British Baluchistan to make rules and prescribe fees, see the British Baluchistan Criminal Justice Regulation (VII of 1895), s. 20 (1) (*a*), and the British Baluchistan Civil Justice Regulation (IX of 1896), s. 92 (*a*).

§ In the Punjab, the words quoted in s. 20, cl (1) have been repealed by Punjab Land Revenue Act, (XVII of 1887)

‖ Certain words repealed by Act. 38 of 1920 have here been omitted.

21.* A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Tables of process-fees

Number of peons in District and subordinate Courts.

22.* Subject to rules to be made by the High Court, and approved by the Local Government. † * * *

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Court subordinate thereto,

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865‡ (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge.

Number of peons in Mufassil Small Cause Courts.

Notes.—*Vide* 20 W. R. Cr 9.

23§ Subject to rules to be framed by the Chief Controlling Revenue Authority and approved by the Local Government † every officer performing the functions of a collector of a district shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

Number of peons in Revenue Courts

24. [*Process served under this Chapter to be held to be process within meaning of Code of Civil Procedure*] *Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection of fees by stamps.

25. All fees referred to in section 3 or chargeable under this Act, shall be collected by stamps.

26. The stamps used to denote any fees chargeable under this Act, shall be impressed or adhesive, or partly impressed and partly adhesive, as the "Local Government" ‖ may, by notification in the "Local Official Gazette" from time to time direct, ¶

Stamps to be impressed or adhesive.

Notes—*Vide* 27 A 406, 19 B 145.

Rules for supply, number, renewal and keeping accounts of stamps

27. The Local Government may, from time to time, make rules for regulating—

(*a*) the supply of stamps to be used under this Act;

(*b*) the number of stamps to be used for denoting any fee chargeable under this Act;

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* Sections 21, 22 and 23 are not in force in Burma—*Vide* Burma Act I of 1910 s. 2.

† Certain words have been repealed here by Act 38 of 1920.

‡ The reference to Act XI of 1865 should now be read as made to the Provincial Small Cause Courts Act, (IX of 1897), s. 2.(2) and (3).

§ In the Punjab, s. 23 has been repealed—See the Punjab Land Revenue Act (XVII of 1887). Section 23 has been amended in its application to the Punjab, *vide* Punj. Act XII of 1922.

‖ Substituted by Act 38 of 1920.

¶ For rules as to levy of Court-fees by adhesive and impressed stamps, see *the Gazette of India* 1883. Pt. I, p. 189.

(c) the renewal of damaged or spoiled stamps ; and

(d) the keeping of accounts of all stamps used under this Act :

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Notes—The words "for use in the High Court only" impressed on the back of Court-fee stamps do not limit their use to High Court only. The words may have some significance for administrative purposes, but they are not capable of invalidating the stamps themselves if filed in lower Courts 97 Ind Cas. 822. Where stamps worth Rs 100, Rs 95 and some new stamps were affixed to review application requiring stamps worth Rs 232, application was treated to be unstamped and invalid A. I. R 1931 Nag 94=26 N. L. R 263 ; see also 11 Pat. L T. 708=A. I. R. 1931 Pat. 113 ; A. I. R 1931 Pat. 39=11 P L T. 711.

Stamping documents inadvertently received.

28 No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct ; and, on such document being stamped accordingly, the same and every proceeding relative thereto, shall be as valid as if it had been properly stamped in the first instance.

Scope—Clause (i) is not applicable to memorandum of appeal insufficiently ... ee also in this connection 12 A 129 ; 25 M. 380 ; ... 144 ; 96 Ind. Cas 135 , 71 Ind. Cas. 736 ; 67 ... 72 ; A. I. R. 1933 Pat. 81 ; A. I. R. 1932 Pat. 228.

... words 'mistake or inadvertence' in the section mean mistake or inadvertence on the part of the Court or its officers and not that on the part of an appellant or his advisers. 12 A. 129 ; 28 A. 310 ; 4 A L J. 130. But a later full Bench of the Allahabad High Court held that this section is subject to no such limitation 29 A 749 (F. B) ; 24 M. 331 ; 25 M. 380.

Rejection of plaint, etc—This section does not override the provisions of the Civil Procedure Code and it is illegal on the part of a Court to reject an insufficiently or improperly stamped plaint or memorandum of appeal, without giving the appellant time to supply deficient stamp. 136 P. R. 1888 ; A W. N. 1902, 183 ; 54 P. L. R 1909 ; 27 P. L. R. 1917 ; 39 Ind. Cas. 766. A Court is competent even to extend the time. 12 C. L J. 62 ; 2 Ind. Cas. 1. But by filing an unstamped plaint ... (1904) 133. ... W. N. 153. ... up of duty ... R 1907 ; 32 M. 305 ; 19 C. 747 ; 27 C 814 ; 15 A. 65 ; 1900 P L. R 189 ; A. I. R. 1931 Rang. 38=8 Rang. 538.

... be paid on the memo- ... an order absolute under ...

... s the power to direct on revision the payment of Court-fee and to order that the plaint improperly stamped be properly stamped 22 C. L. J. 57.

Amended document.

29. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Notes—Where by amending the plaint, a fresh suit is brought this section does not exempt from payment of Court-fees. P R 132 of 1892. See 13 A. W. N. 220, where opportunity was given to the plaintiff to amend the plaint.

Cancellation of stamp.

30. No document requir ... ed or ... Court ...

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

Notes.—Where a plaint is returned by a Court for presentation to the proper Court, the Court to which the plaint is presented thereafter is bound to credit for the fee levied by the Court that returned the plaint. 21 M.L. J. 533 (F. B) = 10 Ind. Cas. 201.

CHAPTER VI.
MISCELLANEOUS.

31. [*Repayment of fees paid on applications to Criminal Courts.*] *Rep. Act 18 of 1923, s. 163.*

32. [*Amendment of Act VIII of 1859 and Act IX of 1869.*] *Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*

Admission in criminal cases of documents for which proper fee has not been paid.

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

Sale of stamps.

34. * (1) The Local Government may from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person, not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

NOTES.

Exchange.—A muktear who has purchased a Court-fee stamp of 8 annas for a client, and not having any use of it, has transferred it to another client who promised to return another stamp of equal value when the vendor arrived in Court, has not sold a stamp within the meaning of s. 34 of the Court Fees Act and cannot be convicted under that section. 30 C. 921 = 7 C. W. N 704; see also 24 M. 312. Case of a muktear who purchases Court-fee stamp for client and transfers it to another client is not covered by s. 34. A. I. R. 1931 Lah. 337 = 32 P. L R 432 = 32 Cr. L. J. 1051 = 133 Ind. Cas. 645.

Power to reduce or remit fees.

35. The "Local Government"† may, from time to time by notification ‡ in the "local official Gazette"† reduce or remit, in the whole or in any part of " the territories under its administration" ‡ all or any of the fees mentioned in the first and second schedules to this Act annexed, and may in like manner cancel or vary such order.

Notes.—Government notification regarding valuation in cases of s. 47 C. P. Code was held to apply to restitution as well A. I. R. 1925 Pat. 577 = 4 Pat. 294 = 7 P. L. T. 415 = 92 Ind. Cas. 474.

Saving of fees to certain officers of High Courts

36. Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

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* S. 34 has been substituted for the original by the Repealing and Amending Act (XII of 1891).

† The words within quotations have been substituted by Act 38 of 1920.

‡ For Notification No. 4650 dated September 10, 1889 as amended and added to by subsequent notification, see appendix.

SCHEDULE I.

Advalorem Fees.

NUMBER.		PROPER FEE.
1. Plaint, "written statement pleading a set-off, or counter-claim"* or memorandum of appeal (not otherwise provided for in this Act) "or of cross-objection"* presented to any Civil or Revenue Court except those mentioned in section 3 †	When the amount or value of the subject-matter in dispute does not exceed five rupees. ...	Six annas.
	When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees. ..	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees ...	Twelve annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees up to five thousand rupees ...	Five rupees.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees ..	Ten rupees.
	When such amount or value exceeds ten thousand rupees, or every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees. ...	Fifteen rupees.
	When such amount or value exceeds twenty thousand rupees for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees. ...	Twenty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees. ...	Twenty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees ...	Twent-five rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	

* The words quoted are inserted by Act V of 1908. Sch. 4

† To ascertain the proper fee leviable on the institution of a suit see the Table annexed to this Schedule.

ousiness of a
e paid for in
amount of
must bear an *advalorem* stamp. 15 M. 294 In a suit for the partition of joint family property, where the plaintiff is in joint possession with the other co-parceners, the Court-fee is to be fixed by the article. 8 Ind Cas 512 ; 73 Ind Cas. 788. In suit for assessment of rent, *advalorem* Court fee is payable. A. I. R. 1927 Pat. 123=6 Pat. 17=8 P. L. T. 366=100 Ind Cas. 913. Where claim is by married sister probate or succession

Court-fees as no fee at all had been paid. 36 Ind. Cas. 957. The deduction which a
set-off, it is payment to landlord. 12
tatement was held to be not counter
set-off, he has to pay *advalorem* Court-
fee on the same
. 218=69 Ind. Cas. 921. Court-fee for
decree for excess is prayed for. A. I. R.
set-off. A. I. R 1933 Mad. 203=142 Ind.
on promissory note, claim for specified
set off by reason of breach of convenant of contract of sale out of which transaction in suit arose, comes under this Article. A. I. R. 1933 Mad. 203=142 Ind Cas. 719 Set-off and counter-claim are not defined in the Act. They have definite meanings attached to them A. I R 1933 Sind 247. When a set-off is pleaded by defendant Court-fee is payable only on the amount claimed in excess of that claimed by the plaintiff, and only if a decree for that excess is prayed for. A. I. R. 1927 Nag. 74=97 Ind. Cas. 916 ; see also 69 Ind. Cas. 921.

Cross-objections.—In the case of cross-objections relating to possession of land *advalorem* fee is payable on its value and not on the basis of calculation under s. 7 (v) of the Court Fees Act L R. 5 A. 712=22 A. L. J. 911. A memorandum of cross-objections which relates to costs only should be stampted *advalorem* on its value and is not to be treated as mere application. 2 Rang. 637=3 Bur. L. J. 279 ; see also A. I. R. 1930 All. 832=1930 A. L. J 1090 : A I. R. 1929 Pat 286 ; 8 L L J. 434 ;
. N. 559=A. I. R. 1934 Oudh 246.
cross-objection. 1 Pat 258 Where
plaint valuation, if not unreasonable, should be accepted 70 Ind Cas. 283=25 O C 275. Petition supporting judgment under appeal is not cross-objection. 68 Ind. Cas. 861. A memo of cross-objection filed in High Court on question of costs only does not fall under this article. 25 C. W. N. 934. A memorandum of cross-objection must bear Court-fee *advalorem* irrespective of the fact that the appellant had paid more than what he ought to have paid. 40 C. 160.

Memorandum of appeal—In an appeal in a pre-emption case, in which the appellant asks the Court to reduce by a certain sum, the amount payable by him under the order of the first Court, that sum represents the subject-matter of his appeal. 76 P. R. 1913. In a case where the whole subject-matter of the suit is also the subject-matter of appeal, the amount or value of the subject-matter of appeal is nothing more than the value of the property which the plaintiff is seeking to recover
n. 32 Ind Cas. 121. Where
against a partner, an appeal
this article. 35 Ind. Cas. 429.
Advalorem fees should be paid on conditional decree. 4 U. P. L R. 77=67 Ind. Cas. 106. Person appealing from the preliminary decree for account can put his own valuation. 44 A. 542. Appeal against application for personal decree in a mortgage suit must bear *advalorem* Court-fees. 74 Ind. Cas 21. Where one of the defendants prays for a relief against the other in an appeal *advalorem* fee should be paid. 71 Ind. Cas. 737 ; 45 All. 537. The appeal against an order passed under s. 144 C. P. Code is an appeal against a decree and an *advalorem* stamp-duty is payable thereon. 82 Ind. Cas. 821=22 A. L J 88. Value of decree appealed from decides Court-fees. 48 M. 625=85 Ind. Cas 405 ; A. I. R. 1927 (Pat). 46 ; A. I. R. 1927 Sind 251. In a suit for partition, where property alleged to be impartible is found to be partible, memo of appeal need not be stamped *advalorem*. A. I. R. 1931 Lah. 170=32 P. L. R, 301. Appeal against a final decree on the ground that the mortgagor should or should not have been allowed further time in which to pay the

mortgage debt requires *advalorem* Court-fee. A. I. R. 1931 Nag. 1 (F. B) = 130 Ind. Cas. 98. The principle of valuing appeal is the same as the principle used in valuing the plaint in the original suit for the purpose of Court-fee. A. I. R. 1930 Rang. 164 = 126 Ind. Cas. 645; see also A. I. R. 1931 Cal 333 = 34 C. W N. 217 In appeal against decision on a reference under Land Acquisition Act, s. 10, *advalorem* Court fee is leviable. A. I R, 1929 Mad 223 = 56 M. L J. 387. Appeal from order of restitution not part of appellate decree must bear *advalorem* Court-fee A. I R. 1930 Lah. 24 = 113 Ind. Cas. 270. In appeals from reference under s. 19 of the Land Acquisition Act, Art 1, Sch I applies, and *advalorem* Court-fee is payable on the difference between the sum awarded and that claimed, [illegible]
281 = 110 Ind. Cas. 870; see also A I. R 1924 Mad [illegible]
Cas. 435; A. I R 1932 Oudh 224 = 8 Luck 85; [illegible]
N 1103. In appeal from decision determining a[illegible]
Court-fee should be paid on amount sought to be avoided or enhanced irrespective of whether profits have accrued before or after institution of suit 14 P L T 180 = 12 Pat. 694 = A. I. R. 1933 Pat 234 Where claim by appellant among other sums of money for definitely ascertainable sum by way of *pendente lite* interest was disallowed by trial Court, *advalorem* Court-fee is payable on such sum in appeal 131 Ind. Cas. 253 = 52 A 1029 = 1931 A. L J 233 = A I R 1931 All 351 Where appellant claims amount over and above the amount decreed, Court-fee is payable *advalorem* on the additional amount claimed. 33 P. L R 12 = 142 Ind Cas 829. Appeal from mesne profits requires *advalorem* Court fee. 137 Ind Cas. 855 = 13 P. L. T. 304 = A. I. R. 1932 Pat. 228; see also 142 Ind. Cas 617 = 13 P L T 810 = 12 Pat 188 = A I R 1933 Pat. 81. In appeal from decree in suit for profits, Court fee on interest granted from date of suit till date of decree need not be paid. A I R. 1934 All. 805 = 1934 P. L J 957. In an appeal in respect of costs, *advalorem* Court-fee should be paid on the amount of costs A. I R 1934 Lah. 739 = 35 P L R. 656. In appeal from conditional decret for pre-emption *advalorem* Court-fee should be on the amount fixed for payment A I. R. 1934 Lah 424; see also 59 Ind Cas 667, 83 Ind Cas 780; 10 L L J 55 Where the subject-matter of the suit is also the subject-matter of appeal the amount or value of the appeal is the value of the property sought to be recovered. 25 P R 1916 = 32 Ind. Cas 121: see also 11 P. R. 1916 = 33 Ind. Cas. 138; 3 P. L J 197 = 45 Ind. Cas. 568; 48 Ind. Cas 424 = 91 P R. 1918; 43 A. 56; 46 B. 840 = 67 Ind. Cas. 364; 25 O. C 30 = 67 Ind. Cas 968; 85 Ind Cas 405 = 47 M L. J. 919; A. I R. 1927 Pat. 46 = 5 Pat 721.

Second appeal—Lower Appellate Court's decision, as to demanding additional Court-fees but refusing to extend time for complying with it challenged in second appeal—Art 1 does not apply. Sch. II Art 17 applies. A. I. R. 1927 Nag 100

Order 20, rule 12. C. P C—An appeal from a final decree under this order is chargeable with *advalorem* Court-fee. 14 L. W. 730, 69 Ind. Cas 722.

Order 34, rule 5—An appeal from this order requires *advalorem* Court-fees. 35 A 476 (F B); 57 Ind. Cas 579 = 22 Bom. L R. 811.

Order 34, rule 6—An order refusing to make a decree under this order is a decree and an appeal from such order requires *advalorem* Court fees. 16 A L J. 438.

Appeal from order under Civil Procedure Code, s. 144 does not require *advalorem* fee but a fee of Rs 4. A. I. R 1927 Lah 635.

Mortgage—In the case of appeals or cross objections in suits for redemption or for foreclosure, in all cases whether a decree for interest has been made in them or not in which the Court-fee declared by the Court due at the date of the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeal or cross-objection should be valued and future interest should not be taken into account. The effect of this is that in original appeals the Court-fee should be levied on the sum due at the date of original decree and in all second appeals it should be levied on the sum due at the date of the decree of the lower appellate Court. 3 Pat. L. J. 443. See also 12 C W. N. 1028; 30 A. 547. Where one of the defendants to a mortgage suit appeals on the ground that the properties in his possessions were not liable for the debt, *held* that the appellant was bound to pay *advalorem* Court-fee on the memorandum of [illegible]
suit where the l[illegible]
appellant in the [illegible]
the Court-fee sho[illegible]
74 Ind. Cas. 88 In a suit for redemption and in appeals from those suits the subject matter of dispute; is the existence of the right to redeem and any question as

to the amount payable as to condition of redemption is merely incidental to that right. (1914) M. W. N. 231 ; 20 M. L. J. 120. In appeal from preliminary mortgage decree, the amount awarded together with interest and not that claimed in suit, should be the basis of *advalorem* calculation. No Court-fee is charged on the costs awarded. A. I R. 1927 Sind 251=23 S. L. R. 277. In an appeal against a redemption decree on the ground that more is due, *advalorem* Court-fee is payable on the excess amount claimed. A. I R. 1924 Oudh 170 ; 74 Ind. Cas. 21 ; 47 Ind. Cas 562 ; 47 Ind Cas. 561.

Counter claim—In a suit
first that the plaintiff had no tit
possession without payment to tl
due to her. Plaintiff's suit was d
pay Court-fees on the property. 36
redemption of a mortgage is the right to rede
payable as the condition of redemption should
that right. In an appeal from the decree in
payment of the amount mentioned in the plaint when the defendant contests the right of redemption or claims in the alternative a larger amount than that mentioned in the plaint, the Court-fee payable by him on the memorandum of appeal is the same as was paid by the plaintiff on

No revision lies in matte
5 O. C. 319. Appeal from a
with *advalorem* Cour
under s 331 C P.
Appeal from an orde
valorem Court-fee 18
of appeal should be stamped with *ad valorem* Court-fee on the difference. 19 C. 272. Mere criticism of a judgment cannot be filed as cross-objections. 1 Pat. 258. Deficiency of Court-fees on cross-objection in the lower appellate Court can be raised in the High Court 3 Pat L T. 327. Where no interest is allowed no Court-fee is allowed on interest 6 Pat. L J. 676. Where interest is allowed by decree Court-fee should be paid on the total amount. 3 Pat. L. T. 90. A petition supporting a decree is not cross-objection. 44 A 577 Where the subject-matter of cross-objection cannot be valued in money, any reasonable valuation can be accepted 70 Ind. Cas 286 Cross-objections as to costs only, must be stamped *advalorem* for the value
a suit to set aside a sal
to the extent of Rs. 100,
upon the respondent filec
for legal necessity, he m
780 An order passed under order 21, rule 50 (2) C. P Code has the force of a decree and *advalorem* Court-fee on the value of the subject-matter in dispute must be paid on the memorandum of appeal A. I. R 1930 Lah 825=126 Ind. Cas. 562 ; see also 10 Bur. L. T. 42=35 Ind. Cas. 429 ; see also 35 P. L. R. 565=A. I. R. 1934 Lah. 958.

Where in a partition suit appellant claims extra amount other than one awarded to him, *advalorem* Court-fee must be paid. A. I R. 1935 Lah. 14. Court-fee is payable on whole amount of set-off claimed and not merely on difference between amount claimed in plaint and set-off. A I. R. 1935 Pat. 110

NUMBER	PROPER FEE.
2. Plaint* in a suit for possession under "the Specific Relief Act 1877, s.9"† ... ... 3. (*Repealed by Act VIII of 1871*)	A fee of one-half the amount prescribed in the foregoing scale.

* The words "or memorandum of appeal" repealed by the Court Fees (Amendment) Act (XX of 1870) have been omitted.

† The words quoted have been substituted by the Repealing and Amending Act (XII of 1891) for the words, "Act No XIV of 1859 (*to provide for the limitation of suits*) section 15."

Number		Proper Fee
4. Application for review of judgment if presented on or after the ninetieth day from the date of the decree.	... ...	The fee leviable on the plaint or memorandum of appeal.

'n every case e an applica- ned after the had expired is governed by this article 9 M 134, 7 C. P L R 11, P R 39 of 1879; see also 9 C L. R. 429; 15 C L J 505

Interlocutory Orders.—Neither this article nor article 5 refers to interlocutory orders but they refer to judgments ending in decrees. 6 A L. J 151=31 A. 252.

Forma pauperies—When an application for review is presented in suit in *forma pauperis*, that application like the plaint in a suit is not liable to any Court-fee 20 A. 410 But if he has not been declared a pauper in any of the earlier stages he must file the usual stamp. 91 P. R 1895

An application for a new trial in a Small Cause Court in the mofussil does not fall under this article. 14 W R 249 The proper fee for an application for review of judgment is the fee leviable on the plaint or memorandum of appeal in the suit in which *the judgment sought to be reviewed was passed whether the review affects* the whole or a part of the decree 31 A. 294, 6 A L. J 215, see also A W N 1898 12; 3 C. W N. 292 But see 4 B 26 In computing the period of 89 days the applicant cannot deduct the time which may have been spent in obtaining a copy of the judgment 2 O C 302 'The fee payable on plaint or memorandum of appeal" means the proper fee payable. 1927 Mad 360 The policy of the Legislature was to put a clog on possible *mala fide* application for review A I R 1930 Cal 631= 57 C 679 The word "plaint" in column 3 means only the original plaint which was actually filed A. I. R 1930 Cal. 631=57 C. 679; see also 26 O C 33=11 O L. J. 339=74 Ind Cas 255 In review of dismissal under order 41, r 11 after 90 days, the fee leviable is according to the 3rd column irrespective of the provision relating to the levying of the fee on the plaint A. I R 1926 Cal 638=30 C W N 334= 93 Ind Cas 909 Application for restoration of appeal dismissed for default, should be stamped with Rs 2 stamp A. I R 1932 Cal 641=36 C W N 246, 36 C W. N. 564=55 C L. J. 314=59 C. 1334

Number.		Proper Fee
5. Application for review of judgment, if presented before the ninetieth day from the date of the decree *	... .	One-half of the fee leviable on the plaint or memorandum of appeal.

stands on d as made, s supplied presented before the 90th day from the date of decree is one half of the fee leviable on the plaint or memorandum of appeal and not on the value of the subject-matter in respect of which relief was sought by the application for review 74 Ind Cas 255=26 O. C. 33. Review—presentation to stamp Reporter during vacation—Valid presen-

* As to application for review of judgment see the Code of Civil Procedure Act (V of 1908) s 114, O 47, r 1.

L. J. 108. Court-fee payable urt Fees Act,—Receiver appli- rt fees Act.—Amendment Act— An application for review of the on the valuation of the appeal ion. 11 O. L. J. 339. Where an appeal is filed against a decree but only a part of the appeal is argued, still for purposes of review, Court-fee is payable on the whole appeal and not on that portion alone which was argued in appeal. 6 Pat. L. T. 40=86 Ind. Cas. 143. In application for review, Court-fee is to be calculated according to law in force when appeal was filed. 143 Ind. Cas 481=1932 A. L. J. 908=54 A. 1092=A. I. R. 1933 All. 20. Value of relief sought in review determines Court-fees. A. I. R. 1933 Rang. 203=11 Rang. 120.

Number.		Proper Fee.
6 Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any Civil Court, other than a High Court, or by the presiding officer of any Revenue Court or office, or by any other Judicial or Executive Authority—	
	(*a*)—If the amount or value of the subject-matter is fifty or less than fifty rupees.	Four annas.
	(*b*)—If such amount or value exceeds fifty rupees	Eight annas.
	When such judgment or order is passed by a High Court	One rupee.

Art 6 —A security-bond taken on an order for stay of execution must be stamped *in accordance with the Stamp Act and cannot be written on plain paper bearing* a Court-fee of eight annas. 7 Lah. L. J. 343=A. I. R. 1025 Lah. 552.

7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than a *High Court, or by* any Revenue Court—	
	(*a*)—If the amout or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees	Eight annas.
	(*b*)—If such amount or value exceeds fifty rupees ...	One rupee.
	When such decree or order is made by a High Court.	Four rupees.

Notes —Notes of judgment furnished to the parties under rules of the Small Cause Courts falls under this Article. 6 M. H. C. App. 23.

Number.		Proper fee.
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1869* when left by any party to a suit or proceeding in place of the original withdrawn.	(a)—When the stamp duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original.
	(b)—In any other case ..	Eight annas.

General power of attorney —Whether its copy produced in Court requires Court-fees of annas eight *vide* 9 P. R. 1918 See also 11 B 526

9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division	For every three hundred and sixty words or fraction of three hundred and sixty words	Eight annas,

Notes—There is no power in Civil Court to levy search fees for supplying copies A. I. R. 1928 Mad. 370=51 M 599.

10 [*Repealed by the Guardians and Wards Act, 1890 (VIII of* 1890).]		
11. †Probate of a Will or letters of administration with or without Will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made, exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two per centum on such amount or value.
	When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees.	Two and one-half per centum on such amount or value.
	When such amount or value exceeds fifty thousand rupees	Three per centum on such amount or value.
	Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant	

* See now the Indian Stamp Act, (II of 1899). The reference originally was to Act XVIII of 1869

† No. 11 has been substituted by Act VII of 1910

NOTES.

Amount or value of property.—For purposes of this article the expression "the amount or value of the property" signifies the net value obtained by the deduction value. 22 C. L. J. 160. Where property is , probate duty is not payable on it. 60 C. es on letters of administration granted to a 1 only on half the estate of her husband for it is only that, that she takes as administration The other half she takes as heir. 11 Bur. L. T. 258=50 Ind. Cas. 545. Court-fee payable only in respect of property governed by the probate and not in respect of property which may ultimately be administered by the executor. 62 Ind. Cas. 513=6 P. L. J. 411. Money standing to the credit of a deceased person in Railway Provident Fund deposit is personal property that is an asset of the deceased, and is liable to assessment under Sch. I. Art. 11, A I.R. 1930 Oudh 145 (F. B.)=7 O. W. N. 324=122 Ind. Cas. 322. The value of an annuity is to be determined by its market value. 1 B. 118 See also 24 M. 241; 6 N W. P. 214; 23 C. 577; 3 C 736; 8 B. L. R App 43. In the case of ancestral property bequeathed, the person who applies for probate is to pay stamp duty on the value of testator's share. A. I. R 1927 Mad. 1101=100 Ind Cas 111.

Property in respect of which the grant is made.—The Court-fee is payable on such property which are situate in British India 21 B 139 See also 1 C. 168; 4 C. 725. Power of appointment given to testatrix by Will of her husband is property within the meaning of this article 25 M. 515. But see 12 B. L. R App. 138.

Uncertainty.—The uncertainty of recovering a debt is no ground for reducing the proportionate duty payable thereon for probate. 24 C. 567; 13 B. L R. App 244; 21 W. R 397

Where married parties held property under the Buddist law or under the Code Napolean and one of them dies, only one half of the property is chargeable with duty 20 C. 575; 50 Ind. Cas 545.

No stamp duty is payable on probate granted to a second executor. 15 W. R 496. See also 6 B. L. R App 189 But if no duty was originally paid in that case *ad-valorem* duty should be paid 3 C 733=2 C L. R. 436 See also 6 B. L R. App. 137; 21 W R 246 N Appeal from an order passed on an application for final decree *in a mortgage suit against the judgment-debtor* who objected on the ground that he had satisfied the decree, is chargeable with *advalorem* Court-fee and not only 8 annas 27 O C 225=84 Ind Cas. 742=A I. R 1925 Oudh 102. A mortgagee who obtained a degree for such was ordered to pay out of the sale proceeds a certain amount as interest due to a prior mortgagee decree-holder. He filed an er s 47 C. P. Code, and ayable under this article. 4

property. 11 B. L. R. App. 39; 14 B. L. R. 184; but see 7 B L R. 57.

Number		Proper Fee
12*. Certificate under the Succession Certificate Act, 1889.	In any case...	T val in t Act or v the certificate is extended under section 10 of the Act. NOTE —(1) the amount of a debt is its day the such with tifi-cate has been conferred, under the Act.

* Nos. 11, 12, and 12 A have been substituted by the Succession Certificate Act (VII of 1889), s. 13 (1), for Nos. 11 and 12 as originally enacted.

Number		Proper Fee.
12. Certificate Contd		and, where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

Notes—*Vide* 15 W R 456; 5 M H. C R (App) 45; 5 C L. R. 368; 20 C. W. N. 1125; A I. R. 1926 Nag 306; A. I R 1934 Oudh 414

12 A * Certificate under the Regulation of the Bombay Code, No VIII of 1827.	(1) As regards debts and securities	The same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889 or in respect of an extension of such a certificate, as the case may be.
	(2) As regards other property in respect of which the certificate is granted—	
	When the amount or value of such property exceeds one thousand rupees, but does not exceed ten thousand rupees,	Two per centum on such amount or value.
	Where such amount or value exceeds ten thousand rupees, *but does not exceed fifty thousand rupees*	Two and one-half per centum on such amount or value
	When such amount or value exceeds fifty thousand rupees	Three per centum on such amount or value.
13. † "Application to the High Court of Judicature at Lahore" ‡ for the exercise of its jurisdiction under section 44 of the Punjab Courts Act 1918, or, to the Court of the Finan-	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.

* Nos. 12 and 12A have been substituted for the original No 12 by Act VII of 1889, s 13 (1) and the entries in Cols. 2 and 3 of No 12 A by Act VII of 1910

† This number has been added by the Punjab Courts Act, (XVIII of 1884) s. 71, as amended by the Punjab Courts Act, (XXV of 1899) s 6 except the italicized words which have been added by Act (IX of 1900).

‡ The words within quotations have been inserted by Act 18 of 1919.

Number.		Proper Fee.
cial Commissioner of the Punjab for the exercise of its revisional jurisdiction under section 84 of the Punjab Tenancy Act, 1887.	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

Legislative Change.—It appears from the Punjab Act 1 of 1912 that art. 13 of Schedule II of the Court Fees Act, has deen repealed and as such should be omitted. But it appears from Act 18 of 1919 the article is still in force

Notes.—In case of revision against order rejecting objections to an award, Court-fee payable is *advalorem* on the amount of the decree based on that award where it exceeds Rs. 25 under Art. 13 of Schedule I 108 Ind. Cas. 382.

Number.		Proper Fee.
14.* Application to the "High Court of Judicature at Rangoon"† for the exercise of its revisional jurisdiction under section 622 of the	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees	Two rupees.
15 [Repealed by Act XI of 1923. Sch. II]	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

Table of rates of advalorem fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee	When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
0	5	0 6	85	90	6 12
5	10	0 12	90	95	7 2
10	15	1 2	95	100	7 8
15	20	1 8	100	110	8 4
20	25	1 14	110	120	9 0
25	30	2 4	120	130	9 12
30	35	2 10	130	140	10 8
35	40	3 0	140	150	11 4
40	45	3 6	150	160	12 0
45	50	3 12	160	170	12 12
50	55	4 2	170	180	13 8
55	60	4 8	180	190	14 4
60	65	4 14	190	200	15 0
65	70	5 4	200	210	15 12
70	75	5 10	210	220	16 8
75	80	6 0	220	230	17 4
80	85	6 6	230	240	18 0

* The words and figure in the first column of No. 14 have been substituted for those inserted by the Lower Burma Courts Act, (XI of 1889) s. 584, see the Lower Burma Courts Act (IX of 1900), Sch. I. Pt. I.

† The words within quotations have been substituted by Act 1 of 1923.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.	When the amount or value of the subject-matter exceeds.	But does not Exceed.	Properfee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
240	250	18 12	770	780	58 8
250	260	19 8	780	790	59 4
260	270	20 4	790	800	60 0
270	280	21 0	800	810	60 12
280	290	21 12	810	820	61 8
290	300	22 8	820	830	62 4
300	310	23 4	830	840	63 0
310	320	24 0	840	850	63 12
320	330	24 12	850	860	64 8
330	340	25 8	860	870	65 4
340	350	26 4	870	880	66 0
350	360	27 0	880	890	66 12
360	370	27 12	890	900	67 8
370	380	28 8	900	910	68 4
380	390	29 4	910	920	69 0
390	400	30 0	920	930	69 12
400	410	30 12	930	940	70 8
410	420	31 8	940	950	71 4
420	430	32 4	950	960	72 0
430	440	33 0	960	970	72 12
440	450	33 12	970	980	73 8
450	460	34 8	980	990	74 4
460	470	35 4	990	1,000	75 0
470	480	36 0	1,000	1,100	80 0
480	490	36 12	1,100	1,200	85 0
490	500	37 8	1,200	1,300	90 0
500	510	38 4	1,300	1,400	95 0
510	520	39 0	1,400	1,500	100 0
520	530	39 12	1,500	1,600	105 0
530	540	40 8	1,600	1,700	110 0
540	550	41 4	1,700	1,800	115 0
550	560	42 0	1,800	1,900	120 0
560	570	42 12	1,900	2,000	125 0
570	580	43 8	2,000	2,100	130 0
580	590	44 4	2,100	1,200	135 0
590	600	45 0	2,200	2,300	140 0
600	610	45 12	2,300	2,400	145 0
610	620	46 8	2 400	2,500	150 0
620	630	47 4	2,500	2,600	155 0
630	640	48 0	2,600	2,700	160 0
640	650	48 12	2,700	2,800	165 0
650	660	49 8	2,800	2,900	170 0
660	670	50 4	2,900	3,000	175 9
670	680	51 0	3,000	3,100	180 0
680	690	51 12	3,100	3,200	185 0
690	700	52 8	3,200	3,300	190 0
700	710	53 4	3.300	3,400	195 0
710	720	54 0	3,400	3,500	200 0
720	730	54 12	3,500	3,600	205 0
730	740	55 8	3,600	3,700	210 0
740	750	56 4	3,700	3,800	215 0
750	760	57 0	3,800	3,900	220 0
760	770	57 12	3,900	4,000	225 0
			4,000	4,100	230 0

Number.		Proper Fee.
1. Applicaton or petition— (*contd*)	or to any Court of Small Causes constituted under Act No. XI of 1865* or under Act No. XVI of 1868, section 20,† or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees. or when presented to any Civil, Criminal, or Revenue Court, or to any Board or Executive Officer for the purpose of obtaining a copy or translation of any judgment, decree, or order passed by such Court, Board or officer, or of any other document on record in such Court or Office.	One anna.
	(*b*) When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code,‡ arrest without warrant, and presented to any Criminal Court; or when presented to a Civil, Criminal, or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act; or to deposit in Court revenue or rent; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	Eight annas.
	(*c*)—When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act	One rupee.
	(*d*)—When presented to a High Court ...	Two rupees.

Notes.—Application must be in writing—2 N. W. P. 418.

falls within sub-clause (*a*) of

rd it must be stamped as it is

R. 91=A. I. R. 1928 Sind 87 =107 Ind. Cas. 223.

Stamp duty is not chargeable on an application by a witness for the return of a document filed by him in obedience to summons. 15 W R. 237. Application for

* See now the Provincial Small Cause Courts Act (IX of 1887), by which Act XI of 1865 has been repealed.

† See now s 25 of the Bengal, North Western Provinces, and Assam Civil Courts Act (XII of 1887).

‡ See the Code of Criminal Procedure (Act V of 1898).

probate or letters of administration falls under this section. 15 W. R. 40 ; 51 M. L. J. 481. An appeal against an order absolute for foreclosure or sale should be treated as an application under this Article. 14 C. P. L. R. 100. Application for copy of decree and judgment should be stamped under this Article. 7 W. R. 455. An application under s. 144 Cr. P. Code for mesne profits by way of compensation relates to the execution, discharge or satisfaction of the decree is an appeal from an order dismissing the application, and *advalorem* Court-fees need not be paid. 18 N. L. R. 15.

Clause (*b*).—A petition for withdrawi [illegible] 8 M. 15 (F B). A petition for guardi[illegible] P. R 6, 1873. A petition for having [illegible] clause. 2 B L R A C. 225 ; 11 W. [illegible] not be stamped. No process fees are chargeable in such a case. 2 Bur. L. J. 37=1923 Rang. 245.

Clause (*c*).—A memorandum of appeal from an order under s 58 of Act VI of 1882 presented to the High Court with a stamp of Rs 2 is sufficiently stamped. 1885 P. J 214

Clause (*d*).—Appeal to High Court under section 263 of the Succession Act should be stamped under this section. A W N. 1889, 57. Memorandum or cross-objection on question of costs is chargeable under this article. 25 C. W.N. 934 ; see also A. I. R. 1934 Oudh 118=11 O. W. N. 323.

Number.		Proper Fee.
*1A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (*a*), clause (*b*), or clause (*d*) of article 1, of this Schedule.
2. Application for leave to sue as a pauper.	..	Eight annas.
3 Application for leave to appeal as a *pauper*.	(*a*)—When presented to a District Court ... (*b*)—When presented to a Commissioner or a High Court.	One rupee. Two rupees.
4. Plaint or memorandum of appeal in a suit to obtain possession under Act No XVI of 1838, or "the Mamlatdar's Courts Act, 1876."†	......	Eight annas.
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	... .	Eight annas

* Article IA, has been inserted by Act 14 of 1911, s 121.

† The [illegible] have been substituted by the Repealing and Amending Act [illegible] *Mamlatdar's* [illegible] *or to restore* [illegible]

Notes.—In a suit to establish or disprove a right of occupancy the plaint or memorandum of appeal should bear a Court-fee of eight annas as provided in art. 5. 40A. 358, see also 11 C. L. R. 91 ; 16 M. 310. Application of art. 5 depends upon character of suit and not upon the scope of appeal. A. I. R. 1931 Cal. 333=34 C. W. N. 217. In a suit to establish or disprove a right of occupancy, the plaint or memorandum of appeal should bear a Court-fee stamp of eight annas. 40 A. 358=16 A. L. J. 167.

Number		Proper Fee.
6.* Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898 or the Code of Civil Procedure 1908 and not otherwise provided for by this Act	......	Eight annas.

Notes—When a bond is given under the order of a Court as security by one party for the costs of another, it is subject to two duties, (*a*) one under the Stamp Act and (*b*) under the article 11A. 16. See also 21 C. W. N. 1150 ; but see 24 M. L. J. 637 ; 68 Ind. Cas. 730 A security bond filed by a claimant in a claim case, being an instrument of obligation given in pursuance of an order of Court is governed by Schedule II, Art 6 of the Court Fees Act. 49 C 997=1923 Cal. 269. A security bond taken on order for stay of execution must conform both to stamp and Court Fees [illegible] W. N 1150=43 Ind. Cas. [illegible] to bond for the due perfor- [illegible] 30 P. L. R. 131=11 L L. [illegible] eiver to Court binding himself and his heirs must be stamped as a bond 38 M L J 503=57 Ind Cas. 184 ; see also A. I. R 1933 Lah. 89 ; 34 P L R. 480 Security bond for setting aside an *exparte* decree should be stamped under this article A I. R. 1935 Mad. 380 (F.B.).

Number.		Proper Fee
7. Undertaking under section 49 of the Indian Divorce Act.	....	Eight annas.
8. & 9. *Repealed by the Repealing and Amending Act* (*XII of 1891*).		
10. Mukhtarnama or Vakalatnama.	When presented for the conduct of any one case— (*a*)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (*b*) and (*c*) of this number.	 Eight annas.

* Art. 6 has been substituted for the original by Act 7 of 1914. The original article ran as follows : "Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority"

Number.		Proper Fee.
	(b)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority.	One rupee.
	(c)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	*Two Rupees.*

Notes—A power of appointment which authorises an advocate to make or do any appearance, application or act on behalf of his client must be stamped with a Court-fee as prescribed in article 10, schedule II of the Court Fees Act and not as a Power of Attorney under article 48, schedule 1, of the Stamp Act The word Vakalatnama in article 10 relates to a power filed by a legal practitioner to conduct a a case on behalf of a suitor irrespective of the class to which that legal practitioner belongs. 5 Pat. 255=94 Ind Cas. 841.

A power to a vakil authorizing him to present an application for copies to the Collector, falls under article 10, Sch. II of the Court Fees Act. 9 M 146 (F. B) ; See also 1 C. W. N 11 ; 8 A L J 378 (F. B) ; 108 P. W. R. 1912 ; 6 Ind. Cas. 617 ; 15 Ind. Cas. 122 ; 94 Ind Cas. 841. The article merely means that when an authority is filed, such authority must be stamped The necessity for it is not created by this article. 7 P. L. T 524=27 Cr L. J. 666=94 Ind Cas. 714.

Number.		Proper Fee.
11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented—	(a)—to any Civil Court other than a High Court, or to any Revenue Court or executive officer other than the High Court or Chief Controlling Revenue or Executive Authority	Eight annas.
	(b)—to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue authority	Two rupees

Notes—An application t
Court, reversing an order of a
the intervention of a Court to
cellaneous special appeal 8 B. H. C R 17. On the memorandum of an appeal made to the High Court from an order of the District Judge under s 224 of the Indian Companies Act, a fixed Court-fee of Rs. 2 is payable with reference to art. 11 (b), Sch. II of the Court Fees Act 17 A 238 An order refusing an application under ss 253 and 336 of the Code of Civil Procedure for recovery of the amount decreed from a surety is not a decree nor an order having the force of decree within the meaning of art. 11 of the second schedule to the Court Fees Act 72 P R 1902 An application for mesne profits by defendants against whom the suit had been dismissed is chargeable under this section 11 C L J 541 Under s 588, cl. (28) of the Civ. Pro Code, the direction to Lower Court to readmit a case under s 562 of the Code

the order of the Land Acquisition Judge rejecting an application claiming compensation is chargeable under this article 8 C W N 321 This article is not applicable to appeal from Order under order 21 rule 50 (2) C P Code 35 P L R 565=A. I. R. 1934 Lah 958. *Advalorem* Court-fee is required for an appeal from final decree passed under order 34, rule 5, or under section 144 C P Code. 22 Bom L. R. 811=57 Ind. Cas. 579 ; 47 A =82 Ind Cas. 321. Appeal against order rejecting a

...s a final decree in mortgage suit also ... R. 1929 Pat. 615=120 Ind. Cas. 765. ..., Court-fee is leviable under schedule II, art. 11. 71 Ind. Cas. 173=A. I. R. 1923 Mad 276; but see 8 Rang. 271=126 Ind. Cas. 211. For the purposes of Court-fees an appeal from an order under s. 104 (f) C. P. Code would be governed by art 11, Sch. II. A. I. R. 1928 Lah. 137. Appeal from order rejecting leave for further appeal when decree makes no mention of it is governed by Sch. II. art. 11 (b). 56 C. 482=33 C. W. N. 32=A. I. R. 1929 Cal. 575. In case of appeal against an order filing an award without the intervention of the Court, Court-fee is only eight annas. 25 A. L. J. 741=103 Ind. Cas. 353. Court-fee stamp Rs. 2 is sufficient for appeal from order filing or refusing to file aword. A. I. R. 1932 Oudh 282=6 Luck 703=9 O. W. N. 800.

Number.		Proper Fee.
12. Caveat.	... ...	Five rupees.

Notes—A petition by which a party upon whom citation has been issued, opposes the grant of probate is not a caveat. 20 C. W. N. 787=36 Ind. Cas. 38.

13. Application under Act No X of 1859, *section 26, or Bengal Act No. VI of 1862, † section 9, or Bengal Act No. VIII of 1869, ‡ section 37	... ...	Five rupees.
14. Petition in a suit under the Native Convert's Marriage Dissolution Act, 1866. §		Five rupees.
15. (*Repealed by Act V of 1908, Sch. V.*		
16. *Repealed by the Probate and Administration Act (VI of 1889, s. 18.)*		

* Act X of 1859 has been repealed by the Bengal Tenancy Act (VIII of 1885) in those portions of the Lower Provinces to which that Act extends, and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act (Ben Act I of 1879); in the N. W. P. by Act (XVIII of 1873). [see now the North-Western Provinces Tenancy Act (II of 1901)]; and in the Central Provinces, by the Central Provinces Tenancy Act (XI of 1898).

† Ben. Act VI of 1862 has been repealed by the Bengal Tenancy Act (VIII of 1885), so far as it affected those portions of the Lower Provinces to which that Act extends; and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act (Ben. Act I of 1879).

‡ Ben. Act VIII of 1869 has been repealed by the Bengal Tenancy Act (VIII of 1885).

§ Act XXI of 1866.

Number.		Proper Fee.
17. Plaint or Memorandum of appeal in each of the following suits :— i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court. ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates :		Ten rupees.
iii. to obtain a declaratory decree where no consequential relief is prayed : iv. to set aside an award : v. to set aside an adoption ; vi. every other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act.	... ...	Ten rupees.

Notes.—A suit for the reversal of a *patni* sale is not solely for a declaration that the sale is a nullity. It is on the other hand a suit for the reversal or cancellation of sale, on the assumption that if the validity of the sale is not challenged the sale would remain operative between the parties. 51 C. 216=81 Ind. Cas. 731=28 C. W. N. 683. Where the consequential relief is a mere surplusage and the relief sought is merely declaratory Court-fee charged should be under Schedule 4 art. 17 of the Court Fees Act. 3 Pat. 795. In a suit for assessment of rent *advalorem Court-fee is to be paid.* A. I. R. 1927 P. 123. *This article does not apply to cross* objections. 25 O. C. 275=70 Ind. Cas. 285.

Clause (i)—A plaint to set aside summary order and to declare a Will genuine with consequential relief does not fall under the article. 16 W. R. 213. A suit after rejection of claim to attached property is a suit in which consequential relief is charged for and does not fall under this clause. 13 C. 162. A suit brought according to the provision of Act VII of 1859, s. 246, to establish the right of the person bringing it, must bear a stamp according to the value of the property. 22 W. R. 422.

mped under this
. Cas 713 Where
ostensible owner
ent, the Court-fee
proper C-

payable on the plaint in a suit brought under s. 283 C. P. Code is that prescribed by this article. 22 Ind. Cas. 676 A suit for declaration made as regards the status of the plaintiff in a suit so framed should be made in the presence of the tanants settled by him 16 C. L. J. 383 Court-fee for the plaint in a suit to contest an order passed under s. 282 of the Code of Civil Procedure is rupees ten. 12 P. L. R. 1902. Where a plaintiff who obtained a decree for the full amount sued for against one of the defendants appealed with a view to make the other defendants also liable, *held* he was bound to pay *advalorem* Court-fee on the amount for which the other defendants were sought to be made liable. 46 B. 840=24 Bom. L. R. 813.

Clause (*iii*).—A plaint to have a summary order set side to have a Will declared to be genuine, and to be retained in possession of the property of the deceased was held to be one for consequential relief, and one not coming under art. 17, sch. II. 16 W R 213. A suit under Order 21, Rule 83 C. P. Code is one to declare the plaintiff's rights to this property attached and the mere fact that the property has been sold in the meanwhile in execution does not affect the plaintiff's right of suit. The Court-fee payable upon the suit is Rs. 10 under art 17 Schedule II of

A suit for declaration that certain property belongs to the plaintiff and is not liable to be sold in execution of a mortgage decree which has been passed in a suit to which the plaintiff has not been a party does not involve any consequential
to be
lls) is
ayers
51 C.
216=28 C. W N 683=39 C L.J. 212=81 Ind Cas 873. In a suit for mere declaration where there is no prayer for consequential relief, a fixed fee under this article is sufficient. 27 C. W. N 972=80 Ind. Cas. 589; see also 21 C. W. N. 375=35 Ind. Cas. 797; 28 C. L. J. 301=48 Ind. Cas 552; 72 Ind. Cas. 495=A. I. R. 1924 Pat 385; 5 Lah. 137=83 Ind. Cas. 352; 85 Ind. Cas 801; 53 A. 552=1931 A. L. J. 235; A. I. R. 1933 All. 488 (F. B.) 53=1933 A. L. J. 673. Question of
Court-fees must be decided on plain
or not under Specific Relief Act.
A. L. J. 235. For determining
Question whether suit is likely to
is irrelevant. A. I. R 1932 All. 560=1932 A. L. J. 466. Suit to declare sale invalid by non-party to sale is simple declaratory suit and stamp of Rs. 10 is sufficient. A. I. R. 1933 Oudh 116=10 O. W. N. 19. A suit for mere declaration that deed is ineffective and inoperative on the ground of coercion, undue influence and fraud, requires a stamp of Rs. 10 138 Ind. Cas. 147=9 O. W. N. 440; see also A. I. R. 1933 Oudh
955. A suit f
attachment in
article. A. I I
should be paid
Oudh 528; but
Where the rever
made to the effe
awarded in his
110=60 C L. J.
able and that
ential relief.
perties and
declaration
ion against
ees, the two
ne value of
purposes of jurisdiction. The plaintiff cannot get the second relief without getting the first as the plaintiff's claim is to restrain by injunction the alienees who are in possession of the property and not the limited owner at all and for this he has first to establish his right to seek injuction against the alienees who are strangers A. I. R. 1935 Mad. 262. Where a person, who is not a party to a deed or a decree, sues to have it declared void, art. 17 applies and a Court-fee of Rs. 10 only is sufficient.

A. I. R. 1935 Lah. 611. Suit for declaration of invalidity of document and for avoiding it is not governed by this article. A I. R. 1935 All. 207.

See also 5 Ind. Cas. 582; 1 O. C. 123; 70 P. R. 1877; 19 W. R 17; 109 P. R. 1893; 21 P. R. 1895; 7 M. 134; 23 W R 453; 70 P. R. 1877; 16 W. R 259; 1 B. 543; 6 A. 466; 51 P R. 1887; 10 C 599; 22 W. R 438; 16 C. L. J. 194; 28 C. L. J. 301; 43 Ind. Cas. 64; 17 C. L. J. 416; 17 C. L. J. 426; 50 Ind. Cas. 203; 35 P. R. 1914; 20 L. W. 716; 46 M L J. 450; A. I. R. 1925 Mad. 804; A. I. R. 1935 Mad. 262.

Clause IV.—No *advalorem* fee need be paid when a suit is brought for a declaration that money is jointly due and that the plaintiff does not object to its being received by defendants. 1923 Lah. 359. For cases under this clause, *vide* also, 12 C W. N 169; 75 Ind. Cas. 774; 6 Rang 281; 54 A. 812;

Clause V.—*Vide* 22 W. R. 338; 1 B 248; 46 Ind. Cas 64; 84 Ind. Cas. 486.

Clause VI.—A suit under s. 14 of the Religious Endowment Act falls under this clause. 10 A. 104. A suit for the removal of Karnavan should be stamped under this section. 4 M. 149; 11 M. 206. In suit by two members of a joint family for money, so far as the question as to who are entitled to receive the money *sued for is concerned, the memo. of appeal was properly stamped with a Court fee of* Rs. 10 under this article. 71 P. R. 1911. A plaint in which the plaintiff, being jointly in
possession of certain ... oned
was sufficiently stamp ... See
also 12 C. W. N. 37; 2 ... intly
in possession *advalore* ... able
on appeal to the High ... rupees,
irrespective of the value of suit. 8 C. 515; 31 M. 89 (F. B). In a suit for restitution of conjugal rights, the memorandum of appeal is not chargeable with *advalorem* Court-fees, but a fee of Rs. 10 is payable thereon under art. 17 (vi), Court-Fees Act. 8 A. L. J. 889. See also 18 C. 378; 8 C. W. N. 705; 28 A. 545. Suit under s. 77 of the Registration Act III of 1877 to enforce the registration of a Will should be stamped under this section. 12 M. L. J. 88. To bring a case within the expression "where it is not possible to estimate at a money value the subject-matter in dispute," it must be established that it is not possible even to state approximately a money value for the subject-matter in dispute. 13 C W. N. 815; see also 37 C. 914.

A ten rupee stamp under this article is required in appeal against propriety of grant of extension of time. 7 N. L. R. 41. A suit to establish a title prejudiced by an order in execution proceedings requires only a ten rupee stamp, although praying that the plaintiff might be put in possession. 1887 P. J. 36. The proper Court-fee in a case under section 92 is Rs. 10 as it falls under art. 17 cl. 6 of the Court Fees Act and this is so even if there is a prayer for the appoinment of the plaintiffs as trustees and also a prayer for accounts. 12 C. L. J. 211=14 C. W. N. 932=7 Ind. Cas. 92. Section 11 of the Court Fees Act does not apply to claim
for interest ac
claim 27 A.
280. The dec
under s. 244
C. P. Code.
53A. 418; see
is no dispute
impeach the
see also 58 Ind.
for partition a
she is in poss
falls under Sc
for partition,
and there is ... clause
(6) of the Court Fees Act. 2 Pat. 432=4 Pat. L. J. 257=72 Ind. Cas. 916 (2) A person alleging he was in possession of certain property asked for a declaration of title as doubt had been cast on it. He also asked for partition on the basis of title. *Held* art. 17 (vi) applies. 29 C. W. N 76. In a suit for cancellation of a mortgage decree which would still leave the defendant free to institute another suit on the mortgage the subject-matter of the suit is the amount of the decree *minus* the value of the chance which the defendant has of obtai[illegible] decree. The latter not being ascertainable the value of the cl[illegible] the suit, cannot be ascertained and the case falls under this article.

Cas. 437. Where the suit is for partition and separate possession of his share in the entire property, his claim falls under this article and a fixed fee of Rs. 10 only is payable thereon. 81 Ind. Cas. 643=7 N. L. J. 91. This article applies to a suit for cancellation of a mortgage decree the mortgagee being left the right to bring suit on same mortgage. A. I. R 1925 Nag. 66. Where in a suit for partition, declaration of title and possession are claimed, the suit does not fall under art. 17 (6) but an *advalorem* duty is payable. 84 Ind. Cas. 538. In a suit under s. 92, C. P. Code, where one of the reliefs claimed is that the defendants should make good a sum of Rs 11,000 estimated to have been misappropriated, no *advalorem* Court-fee is payable thereon. 87 Ind Cas 25. For other cases under this article *vide*, 90 Ind Cas. 629; A. I. R. 1925 Lah. 496; 7 Lah. L. J. 364. In suit to set aside decree by reversioner against him as well as widow, the subject-matter of the suit is the whole of the property comprised in the decree sought to be set aside. A. I. R. 1928 Mad 825. This article applies to a suit with prayer for injunc- [illegible] ay carry on [illegible] 5 All. 292. [illegible] additional [illegible] A. I. R. 1935 Nag. 83 (F. B.). Where the whole of the property is alleged to have been dealt with in two separate suits and under two separate adverse orders, the plaintiff cannot avoid payment of separate Court-fee under the art. 17 in respect of each [illegible] by co-proprietor [illegible] R. 1935 Pesh. 30. [illegible] by him without [illegible] out only as heir and legal representative of original defendant, is governed by art 17 (vi) and the appeal need not be stamped *advalorem* on decree amount. A I R. 1935 Bom. 111. This article should be construed strictly. Suit for restitution of conjugal rights does not come under this. A. I R. 1935 Cal. 338; see also A. I. R. 1935 Cal 338.

Number		Proper Fee.
18. Application under section 523* of the Code of Civil Procedure.	....	Ten rupees.
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908 †	...	Ten rupees.
20. Every petition under the Indian Divorce Act, ‡ except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	. . ....	Twenty rupees.

Notes—Court-fee of Rs. 20 is sufficient in a suit for divorce, whatever damages are claimed. 32 P. L. R 252=12 Lah. 266=A. I. R 1931 Lah. 1 (S B). Court-fee applicable to Divorce Act of 1869 cannot be applied to petition under the Indian and Colonial Divorce Jurisdiction Act of 1926. A. I. R. 1935 All. 791.

* The original reference to s. 326 of Act VIII of 1859, is altered to the above section of Act XIV of 1882. See now Rule 17 of the second schedule to Act V of 1908.

† This entry in the first column of art. 19 has been substituted for the original by Act V of 1903, Sch. IV.

‡ Act IV of 1869.

Number.		Proper Fee.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865*	....	Twenty rupees.

SCHEDULE III †

(*See section 19 I.*)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS IF ANY, AS MAY BE NECESSARY).

IN THE COURT OF

Re Probate of the Will of (*or Administration of the Property and credits of* *deceased.*),

1 { solemnly affirm / make oath }

[illegible] my hands.

2 I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased, are under the value of

ANNEXURE A	Rs	A.	P.
VALUATION OF THE MOVABLE AND IMMOVABLE PROPERTY OF , DECEASED.			
Cash in the house and at the banks, household goods, wearing apparel, books, plates, jewels, &c.			
(*State estimated value according to best of Executor's* or *Administrator's belief.*)			
Property in Government securities transferable at the Public Debt Office			
(*State description and value at the price of the day; also the interest separately, calculating it to the time of making the application*)			
Immovable property consisting of ...			
(*State description, giving in the case of houses the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value, and all rents that have accrued*)			

* Act XV of 1865

† Sch III has been inserted by the Court Fees Amendment Act (XI of 1899), s. 3. the original Sch. ("ENACTMENTS REPEALED") having since been repealed by Act XIV of 1870.

ANNEXURE A.	Rs	As.	P.
Leasehold property.			
(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death, and all rents received or due since that date to the time of making the application).			
Property in public companies.			
(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application).			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes, and other securities for money.			
(State the amount of the whole; also the interest separately, calculating it to the time of making the application).			
Book debts			
(Other than bad)			
Stock in trade			
(State the estimated value, if any)			
Other property not comprised under the foregoing heads ...			
(State the estimated value, if any)			
TOTAL ...			
Deduct amount shown in Annexure B not subject to duty ...			
NET TOTAL ...			

ANNEXURE B. SCHEDULE OF DEBTS, &c.	Rs.	A.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate			
Amount of funeral expenses			
Amount of mortgage incumbrances			
Property held in trust not beneficially or with general power to confer a beneficial interest			
Other property not subject to duty			
TOTAL ...			

Notes.—The Court-fee payable in respect of the estate left by the deceased is to be calculated upon the net value of the estate obtained by deduction of the amount of the debts from the gross value of the estate. 18 C L. J. 30=18 C. W. N. 121.

The trusts referred to in Annexure B to Sch III of the Court Fees Act as exempt from duty are trusts not created by the testator's Will which take effect after his decease, but trusts held not beneficially by the testator during his life-time. 2 Pat. L. J. 411; 2 Pat. L. T. 631

in the form set out by the testator and

APPENDIX A.

ASSAM ACT NO. III OF 1932.

THE ASSAM COURT FEES (AMENDMENT) ACT, 1932.

PUBLISHED IN THE ASSAM GAZETTE OF THE 27TH APRIL, 1932.

An Act to amend the Court Fees Act, 1870.

WHEREAS it is necessary to amend the Court Fees Act, 1870, in its application to Assam in the manner hereinafter appearing: It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) The Act may be called the Assam Court Fees (Amendment) Act, 1932.

(2) It extends to the whole of Assam.

(3) It shall come into force on the 1st May, 1932.

Amendment of section 7.

2. In section 7 of the Court Fees Act, 1870* (hereinafter referred to as the principal Act)—

in sub clause (a) of clause v for the word "ten" the word "twenty" shall be substituted.

Amendment of section 10

3. For clause ii of section 10 of the principal Act, the following clause shall be substituted, namely:—

"ii. In such case—

(a) the suit shall be stayed until the additional fee is paid and if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed; and whether the additional fee is or is not paid,

(b) the Court may, if it is of opinion that the estimation has been grossly insufficient, further ord[illegible] thereof as the Court ma[illegible] Government, and the [illegible] passed by the Court."

APPENDIX B (1).

BENGAL ACT NO. IV OF 1922.

THE BENGAL COURT FEES AMENDMENT ACT, 1922.

[PUBLISHED IN THE CALCUTTA GAZETTE EXTRAORDINARY OF THE 29TH MARCH 1922.]

An Act to amend the Court-Fees Act, 1870, and the Presidency Small Cause Court Act, 1882, with reference to the scale of Court-fees in Bengal.

WHEREAS it is necessary to revise the scale of Court-fees for Bengal by amendment of the Court Fees Act, 1870,* and the Presidency Small Cause Courts Act, 1882, † in their application to Bengal, in the manner, hereinafter appearing; It is hereby enacted as follows:—

*VII of 1870. † XV of 1882.

Short title, extent and commencement.

1. (1) This Act may be called the Bengal Court fees (Amendment) Act, 1922.

(2) It extends to the whole of Bengal.

(3) It shall come into force on the first day of April 1922.

Application of Act.

2. The Court-Fees Act, 1870,* as amended by subsequent legislation and the Presidency Small Cause Courts Act, 1882,† as amended by subsequent legislation shall be amended, in their application to Bengal, in the manner hereinafter provided.

Amendment of section 18 of Act VII of 1870.

3. In section 18 of the Court Fees Act, 1870,* for the words "a fee of eight annas" the words "a fee of one rupee" shall be substituted.

Amendment of section 19.

4. In item viii in section 19 of the same Act for the words "one thousand rupees" the words "two thousand rupees" shall be substituted.

Amendment of Schedule 1, Article 1.

5. For article 1 in the first schedule to the same Act the following shall be substituted, namely ;—

"1. Plaint, written statement, pleading a set off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3	When the amount or value of the subject-matter in dispute does not exceed seventy-five rupees, for every five rupees or part thereof of such amount ‡ [in] value, and	Six-annas.
	When such amount or value exceeds seventy-five rupees, for every five rupees or part thereof, in excess of seventy-five rupees, up to one hundred rupees, and	Eight annas.
	when such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to one hundred and fifty rupees, and	One rupee ten annas.
	when such amount or value exceeds one hundred and fifty rupees, for every ten rupees or part thereof, up to one thousand rupees, and	One rupee two annas.
	when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees, and	Seven rupees, eight annas.

* VII of 1870. † XV of 1882.

‡ *Sic*—should be read "or"—clerical error.

1. Plaint, etc.—*contd.*	when such amount or value exceeds seven thousand five hundred rupees, *for every* two hundred and fifty rupees, or part thereof, in excess of seven thousand and five hundred rupees, up to ten thousand rupees,	Fifteen rupees.
	and	
	when such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees eight annas.
	and	
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to fifty thousand rupees,	Thirty rupees.
	and	
	when such amount or value exceeds fifty thousand rupees for every five thousand rupees *or part thereof, in excess of fifty thousand* rupees :	Thirty-seven rupees-eight annas."
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees.	

Amendment of Schedule I, Article 6.

6. In the third column in Article 6 in same schedule to the same Act—

(*a*) for the words "Four annas," opposite clause (*a*) in the second column the *words* "*Six annas*" shall be substituted ; and

(*b*) for the words "Eight annas" opposite the first item in clause (*b*) in the second column the words "Twelve annas" shall be substituted and for the words "One rupee," opposite the second item in that clause, the words "One rupee eight annas" shall be substituted.

Amendment of Schedule I, Article 11.

7. For the entries above the proviso in the second column, and for the entries in the third column in Article 11 in the same schedule to the same Act, the following shall be substituted, namely :—

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, but does not exceed ten thousand rupees,	Two per centum on such amount or value.
and	
when such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees for the portion of such amount or value which is in *excess of ten thousand rupees,*	Three per centum on such amount or value.
and	
when such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees for the portion of such amount or value which is in excess of fifty thousand rupees,	Four per centum on such amount or value.

and	
when such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees.	Five per centum on such amount or value".

8. For the entry in the second column in Article 12 in the same schedule to the same Act, and for the first paragraph in the third column in the said Article, the following shall be substituted, namely :—

Amendment of Schedule I, Article 12.

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
and	
when such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of ten thousand rupees,	Three per centum on such amount or value and four-and-a-half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
and	
when such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees,	Four per centum on such amount or value and six per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
and	
when such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees.	Five per centum on such amount or value and seven-and-a half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act."

9. For the table of rates of *advalorem* fees leviable on the institution of suits, at the end of the same schedule to the same Act, the table set forth in the schedule to this Act shall be substituted.

Amendment of table of rates of *advalorem* fees.

Amendment of Schedule II, Article 1, clauses (*a*) (*b*) and (*c*)

10. In Article 1 in the second schedule to the same Act—

(*a*) in clause (*a*) after words "Municipal Commissioner" in the third entry in the second column the words "or member of a District Board" shall be inserted ;

(*b*) for the words 'One anna' opposite clause (*a*) in the second column, the words "Two annas" shall be substituted ;

(ii) for the words 'Eight annas', opposite clause (*d*) in the second column, the following shall be substituted, namely :—

"In the case of a complaint or charge of an offence presented to a criminal Court one rupee, and in other cases twelve annas" ; and

(iii) for the words 'One rupee', opposite clause (*c*) in the second column, the words 'One rupee eight annas' shall be substituted.

11. For clause (*d*) in the second column in Article 1 in the same schedule to the same Act, and for the entries opposite that clause in the third column thereof, the following clause and entries shall be substituted, namely :—

Amendment of Schedule II, Article 1, clause (d).

"(*d*) (i) When presented to the High Court under section 115 of the Code of Civil Procedure, 1908* for revision of an order—	
(*a*) when the value of the suit to which the order relates does not exceed Rs. 1,000	Five rupees.
(*b*) when the value of the suit exceeds Rs. 1,000.	Ten rupees.
(ii) when presented to the High Court otherwise than under that section.	Two rupees."

Amendment of Schedule II, Article 10

13 In the third column in Article 10 the same schedule to the same Act,—

(1) for the words "Eight annas." opposite clause (*a*) in the second column, the words "one rupee" shall be substituted ; and

(2) for the words "one rupee," opposite clause (*b*) in the second column, the words "one rupee eight annas" shall be substituted.

Amendment of Schedule II, Article 11.

14. For Article 11 in the same schedule to the same Act the following shall be substituted namely :—

"11. Memorendum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented—	(*a*) (*i*) to any revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority	Eight annas.
	(*ii*) to any Civil Court other than a High Court	One rupee.
	(*b*) to a Chief Controlling Executive or Revenue Authority	Two rupees.
	(*c*) to a High Court.	Five rupees.

Amendment of Schedule II, Article 12

14. Above the words "Five rupees" where they occur in the third column, opposite Articles 12 and 13 in the same schedule to the same Act, the words "Ten rupees" shall be inserted opposite Article 12 and the bracket between Articles 12 and 13 in the second column shall be omitted.

Amendment of Schedule II, Article 17.

15. (1) The words "Ten rupees" in the third column, opposite Article 17 in the same schedule to the same Act, and the bracket opposite that article in the second column in the same schedule shall be omitted.

(2) In the third column in the said Article—

(*a*) opposite entries i, ii, iv and vi, the words "Fifteen rupees" shall be inserted ; and

(*b*) opposite entries iii and v, the words "Twenty rupees" shall be inserted.

Amendment of section 71 of Act XV of 1882.

16. In section 71 of the Presidency Small Cause Courts Act, 1882,—

(1) in clause (*a*) for the words "five hundred rupees" the words "fifty rupees" shall be substituted :

(2) after clause (*a*) the following shall be inserted, namely :—

"(*b*) when the amount or value of the subject matter exceeds fifty rupees, but does not exceed five hundred rupees—the sum of six rupees four annas and three annas in the rupee on the excess of such amount or value over fifty rupees ;"

(3) clause (*b*) shall be renumbered as clause (*c*) and in that clause as renumbered for the words "sixty-two rupees eight annas" the words "ninety rupees ten annas" shall be substituted, and after the words "one anna" the words "six pies" shall be inserted.

*Act V of 1908.

17. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued.

Exemption of certain probates, letters of administration and certificates.

THE SCHEDULE.

Table of rates of advalorem *fees leviable on the institution of suits.*

[*See* section 9 of the Bengal Court Fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs	Rs. A.	Rs.	Rs.	Rs A.
...	5	0 9	340	350	39 6
5	10	0 12	350	360	40 8
10	15	1 2	360	370	41 10
15	20	1 8	370	380	42 12
20	25	1 14	380	390	43 14
25	30	2 4	390	400	45 0
30	35	2 10	400	410	46 2
35	40	3 0	410	420	47 4
40	45	3 6	420	430	48 6
45	50	3 12	430	440	49 8
50	55	4 2	440	450	50 10
55	60	4 8	450	460	51 12
60	65	4 14	460	470	52 14
65	70	5 4	470	480	54 0
70	75	5 10	480	490	55 2
75	80	6 2	490	500	56 4
80	85	6 10	500	510	57 6
85	90	7 2	510	520	58 8
90	95	7 10	520	530	59 10
95	100	8 2	530	540	60 12
100	110	9 12	540	550	61 14
110	120	11 6	550	560	63 0
120	130	13 0	560	570	64 2
130	140	14 10	570	580	65 4
140	150	16 4	580	590	66 6
150	160	18 0	590	600	67 8
160	170	19 2	600	610	68 10
170	180	20 4	610	620	69 12
180	190	21 6	620	630	70 14
190	200	22 8	630	640	72 0
200	210	23 10	640	650	73 2
210	220	24 12	650	660	74 4
220	230	25 14	660	670	75 6
230	240	27 0	670	680	76 8
240	250	28 2	680	690	77 10
250	260	29 4	690	700	78 12
260	270	30 6	700	710	79 14
270	280	31 8	710	720	81 0
280	290	32 10	720	730	82 2
290	300	33 12	730	740	83 4
300	310	34 14	740	750	84 6
310	320	36 0	750	760	85 8
320	330	37 2	760	770	86 10
330	340	38 4	770	780	87 12

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.		When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	
Rs.	Rs.	Rs.	A.	Rs	Rs.	Rs	A.
780	790	88	14	4 300	4,000	367	8
790	800	90	0	4,400	4,500	375	0
800	810	91	2	4,500	4,600	382	8
810	820	92	4	4,600	4,700	390	0
820	830	93	6	4,700	4,800	397	8
830	840	94	8	4,800	4 900	405	0
840	850	95	10	4,900	5 000	412	8
850	860	96	12	5,000	5,100	420	0
860	870	97	14	5,100	5,200	427	8
870	880	99	0	5,200	5,300	435	0
880	890	100	2	5,300	5,400	442	8
890	900	101	4	5,400	5,500	450	0
900	910	102	6	5,500	5,600	457	8
910	920	103	8	5,600	5,700	465	0
920	930	104	10	5,700	5,800	472	8
930	940	105	12	5,800	5 900	480	0
940	950	106	14	5 900	6,000	487	8
950	960	108	0	6,000	6,100	495	0
960	970	107	2	6,100	6,200	502	8
970	980	110	4	6,200	6,300	510	0
980	990	111	6	6,300	6,400	517	8
990	1,000	112	8	6,400	6,500	525	0
1,000	1,100	120	0	6,500	6,600	532	8
1,100	1,200	127	8	6,600	6,700	540	0
1,200	1,300	135	0	6,700	6,800	547	8
1,300	1,400	142	8	6,800	6,900	555	0
1,400	1,500	150	0	6,900	7,000	562	8
1 500	1,600	157	8	7,000	7,100	570	0
1,600	1,700	165	0	7,100	7,200	577	8
1,700	1,800	172	8	7,200	7,300	585	0
1,800	1,900	180	0	7,300	7,400	592	8
1,900	2,000	187	8	7,400	7,500	600	0
2,000	2,100	195	0	7,500	7,750	615	0
2,100	2,200	202	8	7,750	8,000	630	0
2,200	2,300	210	0	8,000	8 250	645	0
2,300	2 400	217	8	8,250	8,500	660	0
2,400	2,500	225	0	8,500	8,750	675	0
2,500	2,600	232	8	8,750	9,000	690	0
2,600	2,700	240	0	9,000	9 250	705	0
2,700	2,800	247	8	9,250	9,500	720	0
2,800	2,900	255	0	9,500	9,750	735	0
2,900	3,000	262	8	9,750	10,000	750	0
3,000	3,100	270	0	10,000	10,500	772	8
3,100	3 200	277	8	10,500	11,000	795	0
3,200	3,300	285	0	11,000	11,500	817	8
3,300	3,400	292	8	11,500	12,000	840	0
3,400	3,500	300	0	12 000	12,500	862	8
3,500	3,600	307	8	12,500	13,000	885	0
3,600	3,700	315	0	13,000	13 500	907	8
3,700	3,800	322	8	13,500	14,000	930	0
3,800	3,900	330	0	14,000	14,500	952	8
3,900	4,000	337	8	14,500	15,000	975	[illegible]
4,000	4,100	345	0	15,000	15,500	997	
4,100	4,200	352	8	15,500	16,000	1,020	
4,200	4,300	360	0	16,000	16 500	1,042	

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.		When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	
Rs.	Rs	Rs.	A.	Rs.	Rs.	Rs.	A
16,500	17,000	1,065	0	47,000	48,000	2,040	0
17 000	17,500	1,087	8	48,000	49 000	2,070	0
17,500	18,000	1,110	0	49,001	50,000	2,100	0
18,000	18,500	1,132	8	50,000	55,000	2,137	8
18,500	19,000	1,155	0	55,000	60,000	2,175	0
19,000	19,500	1,177	8	60,000	65,000	2,212	8
19,500	20,000	1,200	0	65,000	70,000	2,250	0
20,000	21,000	1,230	0	70,000	75,000	2,287	8
21,000	22,000	1,260	0	75,000	80,000	2,325	0
22,000	23,000	1,290	0	80,000	85,000	2,362	8
23,000	24,000	1,320	0	85,000	90,000	2,400	0
24,000	25,000	1,350	0	90,000	95 000	2,437	8
25,000	26,000	1,380	0	95,000	1,00,000	2,475	0
26,000	27,000	1,410	0	1 00 000	1,05,000	2,512	8
27,000	28,000	1,440	0	1,05,000	1,10,000	2,550	0
28,000	29,000	1,470	0	1,10,000	1,15,000	2,587	8
29,000	30 000	1,500	0	1,15,000	1,20,000	2,625	0
30,000	31,000	1,530	0	1,20,000	1,25,000	2,662	8
31,000	32,000	1,560	0	1,25,000	1,30,000	2,700	0
32,000	33,000	1,590	0	1,30,000	1.35 000	2,737	8
33,000	34,000	1,620	0	1,35,000	1,40,000	2,775	0
34,000	35,000	1,650	0	1,40,000	1.45,000	2,812	8
35,000	36,000	1,680	0	1,45 000	1,50,000	2,850	0
36,000	37,000	1,710	0	1,50,000	1,55,000	2,887	8
37,000	38,000	1,740	0	1,55,000	1,60,000	2,925	0
38,000	39,000	1,770	0	1,60,000	1,65,000	2,962	8
39,000	40,000	1,800	0	1,65,000	1,70,000	3,000	0
40,000	41,000	1,830	0	1,70,000	1 75,000	3,037	8
41,000	42,000	1,860	0	1,75,000	1 80,000	3,075	0
42,000	43,000	1,890	0	1,80,000	1,85,000	3,112	8
43,000	44,000	1,920	0	1,85,000	1,90,000	3,150	0
44,000	45,000	1,950	0	1,90,000	1,95,000	3,187	8
45,000	46,000	1,980	0	1,95,000	2,00,000	3,225	0
46,000	47,000	2,010	0	2 00,000	2,05 000	3,262	8

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees or part thereof, up to a maximum fee of ten thousand rupees, for example—

Rs.	Rs.	A.
3,00,000	4,012	8
4,00,000	4,762	8
5,00,000	5,512	8
6 00,000	6,262	8
7,00,000	7,012	8
8,00,000	7,762	8
9,00,000	8,512	8
10,00,000	9,262	8
11,00,000	10,000	0

Appendix B (2).

BENGAL ACT VII OF 1935.

THE COURT FEES (BENGAL AMENDMENT) ACT, 1935.

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE 16TH MAY, 1935.]

An Act further to amend the Court-fees Act, 1870.

WHEREAS it is expedient to revise the law relating to Court-fees in Bengal by amendment of the Court Fees Act, 1870*, in its application to Bengal, in the manner hereinafter appearing ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act† to the passing of this Act ; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called the Court Fees (Bengal Amendment) Act, 1935.

(2) It extends to the whole of Bengal.

(3) It shall come into force in whole or in part on such date as the Local Government may, by notification in *the Calcutta Gazette*, appoint and for this purpose different dates may be appointed for different provisions of this Act.

Application of Act.

2. The Court Fees Act, 1870, hereinafter referred to as the said Act, shall, in its application to Bengal, be amended in the manner hereinafter provided.

Substitution of new section for section 2 of Act VII of 1870.

3. For section 2 of the said Act the following section shall be substituted, namely :—

Definitions.

"2. *In this Act, unless there is anything repugnant in the subject or context,*—

(1) [illegible]

(2) [illegible]

(3) [illegible] ector appointed by the Collector to perform the functions of a Collector under this Act ;

(4) 'suit' includes an appeal from a decree except in section 8A "

Amendment of heading of Chapter II.

4. In Chapter II of the said Act, for the heading "Fees in the High Courts and in the Courts of Small Causes at the Presidency Towns" the heading "Fees payable in Courts and in Public Offices" shall be substituted.

Amendment of heading of Chapter III.

5. In Chapter III of the said Act, for the heading "Fees in other Courts and in Public Offices" the heading "Computation of fees" shall be substituted.

Amendment of section 6

6. (1) Section 6 of the said Act shall be transferred from Chapter III and inserted after section 5 in Chapter II and section 6 as thus transferred shall be re-numbered as sub-

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* VII of 1870

† 5 & 6 Geo V, c 61 ; 6 & 7 Geo V, c. 37 ; 9 & 10 Geo V, c. 101.

section (1) of section 6 and in that section as so re-numbered for the words "be paid" the words "has been paid" shall be substituted.

(2) To the said section as so re numbered and amended the following sub-section shall be added, namely :—

"(2) Notwithstanding anything contained in sub-section (1) or in any other Act, a Court may receive a plaint or memorandum of appeal in respect of which an insufficient fee has been paid, subject to the following conditions, namely :—

(*a*) no such plaint or memorandum of appeal shall be registered unless the plaintiff or appellant has, before such date as the Court may have fixed in this behalf paid to the Court such reasonable sum on account of Court-fee as the Court may direct ;

(*b*) the Court shall reject the plaint or memorandum of appeal if the sum referred to in clause (*a*) is not paid before the date fixed by the Court."

Amendment of section 7.

7. In section 7 of the said Act,—

(1) clause (*b*) of paragraph iv shall be omitted ;

(2) in paragraph iv, after the words "memorandum of appeal" the following words, figure and letter shall be inserted, namely :—

"subject to the provisions of section 8C." ;

(3) for paragraph v the following paragraph shall be substituted, namely :—

"v. In suits for the possession of land, buildings or gardens—

(*a*) according to the value of the subject-matter, and such value shall be deemed to be fifteen times the nett profits which have arisen from the land, building or garden during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market-value of the land, building or garden,

whichever is lower ;

(*b*) if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are no such profits, according to the market-value of the land, building or garden :

Explanation.—In this paragraph "building" includes a house, out-house, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever :" ;

(4) for paragraph vi the following paragraph shall be substituted, namely :—

"vi In suits to enforce a right of pre-emption—according to the market-value of the land, building or garden in respect of which the right is claimed :

Explanation.—In this paragraph 'building' has the same meaning as in paragraph v ." ;

(5) after paragraph vi the following paragraph shall be inserted, namely :—

re of joint

e in any

—

if the plaintiff has been excluded from possession of the property of which he claims to be a co-parcener or co-owner, according to the market-value of the share in respect of which the suit is instituted :".

Insertion of new section 8A. to 8F.

3. After section 8 of the said Act the following sections shall be inserted, namely :—

"8A. In every suit in w

Statement of particulars of subject-matter of suits and plaintiff's valuation thereof.

matter of the suit and his own valuation thereof unless such particulars and the valuatien are contained in the plaint. The statement shall be in such form and shall contain such particulars as may be prescribed by the Local Government by notification

in *the Calcutta Gazette*. In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement.

Procedure where insufficient Court fee is filed on plaint or memorandum of appeal.

8B. (1) In every suit in which a Court fee is payable under this Act on the plaint or memorandum of appeal the Court shall, as soon as may be after the registration of the plaint or memorandum of appeal, and in every case before proceeding to deliver judgment, record a finding whether a sufficient Court fee has been paid.

(2) [illegible] rt-fee has been paid on the [illegible]

(a) [illegible] has determined the proper amount of such Court-fee payable and the plaintiff or the appellant, as the case may be, has paid such amount or until the date referred to in clause (*b*), as the case may be :

Provided that if the plaintiff or appellant gives, within such time as the Court may allow, security, to the satisfaction of the Court, for the payment of any additional amount for which he may be found liable the Court may proceed with the suit.

(*b*) fix a date before which the plaintiff or appellant shall pay the amount of Court-fee due from him, as determined by the Court under clause (*a*).

(3) If the plaintiff or appellant fails to give the security referred to in clause (*a*) of sub-section (2) or to pay the amount referred to in clause (*b*) of that sub-section within the time allowed, or before the date fixed, by the Court, as the case may be, the suit shall be dismissed.

Inquiry as to valuation of suits.

8C. If the Court is of opinion that the subject-matter of any suit has been wrongly valued it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

Investigation to as certain proper valuation.

8D. (1) For the purpose of an inquiry under section 8C the Court may depute, or issue a commission to, any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and any evidence recorded by such person shall be evidence in the inquiry.

(2) The Court may, from time to time, direct such party to the suit as it thinks fit to deposit such sum as the Court thinks reasonable as the costs of the inquiry, and if the costs are not deposited within such time as the Court shall fix, may, notwithstanding anything contained in any other Act, dismiss the suit if such party is the plaintiff or the appellant, and in any other case, may recover the costs as a public demand.

Power of persons making inquiry under sections 8C and 8D.

8E (1) The Court, when making an inquiry under section 8C and any person making an investigation under section 8D shall have, respectively, for the purposes of such inquiry or investigation, the powers vested in a Court under the Code of Civil Procedure, 1908,* in respect of the following matters, namely :—

(*a*) enforcing the attendance of any person and examining him on oath or affirmation ;

(*b*) compelling the production of documents or material objects ; and

(*c*) issuing commissions for the examination of witnesses

(2) An inquiry or investigation referred to in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code†.

*Act V of 1908.

† Act XLV of 1860.

Costs of inquiry as to valuation and refund of excess fee.

8F. If in the result of an inquiry under section 8C the Court finds that the subject-matter of the suit has been undervalued the Court may order the party responsible for the undervaluation to pay all or any part of the costs of the inquiry.

If in the result of such inquiry the Court finds that the subject-matter of the suit has not been undervalued the Court may, in its discretion, order that all or any part of such costs shall be paid by Government or by any party to the suit at whose instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid.

Repeal of sections 9 and 10.

9. Sections 9 and 10 of the said Act are hereby repealed.

Substitution of new section for section 11.

10. For section 11 of the said Act the following section shall be substituted, namely :—

Procedure in suits for mesne profits or accounts when amount found due exceeds amount claimed.

"11 Where, in any suit for mesne profits or for land and mesne profits or for an account, the fee which would have been payable if the suit had comprised the whole of the relief to which the Court finds the plaintiff to be entitled exceeds the fee actually paid, the Court shall require the plaintiff to pay an additional fee equal to the amount of the excess, and if such additional fee is not paid within such time as the Court may fix, the suit, or if a decree has previously been passed therein, so much of the claim as has not been so decreed, shall be dismissed :

Provided that, where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion only shall be dismissed."

Amendment of section 12.

11. In paragraph ii of section 12 of the said Act, for the words and figure "and the provisions of section 10, paragraph ii, shall apply" the following shall be substituted, namely :—

"and thereafter :—

(*a*) if the party required to pay is the appellant or petitioner, the provisions of sub-sections (2) and (3) of section 8B shall, so far as may be, apply ;

(*b*) if the party required to pay is the respondent or the opposite party, the provisions of sub-section (2) of section 8B shall, so far as may be, apply, and if such party fails to pay the fee required before the date fixed by the Court, the Court shall recover the amount of such fee from him as a public demand :

Explanation—For the purposes of this section a question relating to the classification of any suit for the purpose of section 7 shall not be deemed to be a question relating to valuation."

Substitution of new section for section 17.

12. For section 17 of the said Act, the *following section shall be substituted, namely* :—

Multifarious suits.

"17. (1) In any suit in which two or more separate and distinct causes of action are joined and separate and distinct [illegible] laint [illegible] the [illegible] nder [illegible]

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, 1908,* to order separate trials.

* Act V of 1908.

(2) Where more reliefs than one based on the same cause of action are sought either jointly or in the alternative, the fee shall be paid according to the value of the relief in respect of which the largest fee is payable,"

Amendment of section 19. **13** In section 19 of the said Act,—

(a) in paragraph i, after the words " Power-of-attorney" the words "or other written authority" shall be inserted ; and

(b) *after paragraph xxiv the following paragraph shall be added, namely* :—

"xxv Petitions of appeal by Government servants or servants of a Court of Wards against orders of dismissal, reduction or suspension ; copies of such orders filed with such appeals, and applications for obtaining such copies "

Insertion of new section 34A. **14** After section 34 of the said Act the following section shall be inserted, namely :—

" 34A Enlargemen. of time. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired "

Substitution of new section for section 35. **15.** For section 35 of the said Act the following section shall be substituted, namely :—

"35 Power to suspend, reduce or remit fees. (1) The Local Government may, from time to time subject to such conditions or restrictions as it may think fit to impose, by notification in the *Calcutta Gazette*, suspend the payment of or reduce or remit, in the whole of Bengal or in any part thereof, all or any of the fees mentioned in the first and second schedule to this Act annexed and may in like manner cancel or vary such order.

(2) The local Government may, from time to time by rules, prescribe the manner in which any fee the payment of which is suspended under sub section (1) may be realised and for this purpose direct that such fee may be recovered as a public demand;"

16 In Schedule II to the said Act,—

Amendment of Schedule II. (1) in Article 17, after entry v the following entry shall be inserted, namely :—

"vA. for partition and separate possession of a share of *joint family property or of* joint property, or to enforce a right to a share in any property on the ground that it is *joint family property or joint* property if the plaintiff is in possession of the property of which he claims to be a coparcener or co-owner : ... Fifteen rupees."

(2) after article 18 the following article shall be inserted, namely :—

"18A. Application under paragraph 20 of the Second Schedule to the Civil Procedure Code, 1908,* to file an arbitration award, and memorandum of appeal from a decree passed under paragraph 21 of the said Schedule. ... Fifteen rupees."

* *Act V of 1908.*

(3) after Article 21 the following Article shall be inserted, namely :—

"22. Petition.	(a) questioning the election of any person as a Municipal Commissioner, when presented to a District Judge under section 36 of the Bengal Municipal Act, 1932,* (b) questioning the election of any person as a member of a District Board or Local Board, when presented to any authority appointed under clause (a) of section 138 of the Bengal Local Self-Government Act of 1885† to decide disputes relating to such elections.	.. Fifteen rupees."

APPENDIX B(3).

BENGAL ACT XI OF 1935.

THE COURT FEES (BENGAL SECOND AMENDMENT) ACT, 1935.

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE 16TH MAY, 1935.]

An Act further to amend the Court Fees Act, 1870.

WHEREAS is is expedient to amend the Court Fees Act, 1870,‡ in its application to Bengal, in the manner hereinafter appearing ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act § to the passing of this Act ; It hereby enacted as follows :—

Short title, extent, commencement and duration.

1. (1) This Act may be called the Court Fees (Bengal Second Amendment) Act, 1935.

(2) It extends to the whole of Bengal.

(3) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, appoint.

(4) Clauses (a) and (b) of section 4 and sub-section (2) of section 5 shall remain in force for three years only and thereafter the Court-fees Act, 1870, shall have force as if it had not been amended by the said clauses and sub-section.

Application of Act.

2. The Court Fees Act, 1870, hereinafter referred to as the said Act, shall in its application to Bengal, be amended in the manner hereafter provided.

Amendment of Schedule I, Article 8 of Act VII of 1870.

3. In Article 8 of the first schedule to the said Act, for the figures "1879" in the first column the figures "1899" shall be substituted.

* Ben. Act XV of 1932.
† Ben. Act III of 1885.
‡ VII of 1870.
§ 5 & 6 Geo. V, c. 61 ; 6 & 7 Geo. V, c. 37 ; 9 & 10 Geo. V, c. 101.

Amendment of Schedule I, Article II.

4. In Article II of the first schedule to the said Act,—

(*a*) after the words "in excess of a lakh of rupees" in the second column, the words "up to two lakhs and fifty thousand rupees" shall be inserted ;

(*b*) in the second and third columns, before the proviso in the second column, the following shall be inserted, namely :—

"and

when such amount or value exceeds two lakhs and fifty thousand rupees, on the portion of such amount or value which is in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees,	Five and a half per centum.
and	
when such amount or value exceeds three lakhs of rupees, on the portion of such amount or value which is in excess of three lakhs of rupees up to four lakhs of rupees,	Six per centum.
and	
when such amount or value exeeds four lakhs of rupees, on the portion of such amount or value which is in excess of four lakhs of rupees up to five lakhs of rupees,	Six and a half per centum.
and	
when such amount or value exceeds five lakhs of rupees on the portion of such amount or value which is in excess of five lakhs of rupees :"	Seven per centum.

and

(*c*) in the proviso, for the words and figures "the Succession Certificate Act, 1889" the words and figures "the Indian Succession Act, 1925"* shall be substituted.

Substitution in Schedule I of new Article 12.

5. (1) For Article 12 of the first schedule to the said Act the following article shall be substituted, namely :—

"12. Certificate under the Indian Succession Act, 1925.*	When the amount or value of any debt or security specified in the certificate under section 374 of the Act exceeds one thousand rupees,	Two per centum on the first ten thousand rupees, three per centum on the next forty thousand rupees, four per centum on the next fifty thousand rupees, and five per centum on the remainder of such amount or value.
	and	
	when the aggregate amount or value of any debts or securities specified in the certificate and of any debts or securities to which the certificate has been extented under section 376 of the Act exceeds one thousand rupees.	In respect of such portion of the aggregate amount or value as consists of the amount or value of debts or securities so specified, the fee hereinbefore provided in that behalf in this article and three per centum on such portion of the first ten thousand rupees, four-and-a half per centum on such portion of the next forty thound rupees,

* XXXIX of 1925.

six per centum on such portion of the next fifty thousand rupees, and

seven and a-half per centum on such portion of the remainder of such aggregate amount or value as consists of the amount or value of debts or securities to which the certificate has been extended.

Note.—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained."

(2) In the third column of the said article as amended by sub-section ( ),—
(*a*) after the words "five per centum" the following shall be inserted, namely :—

"on the next one lakh and fifty thousand rupees,
five-and a-half per centum on the next fifty thousand rupees,
six per centum on the next one lakh of rupees,
six-and a-half per centum on the next one lakh of rupees,

and

seven per centum"
(*b*) after the words "seven-and a-half per centum" the following shall be inserted, namely :—

"on such portion of the next one lakh and fifty thousand rupees,
eight and a quarter per centum on such portion of the next fifty thousand rupees,
nine per centum on such portion of the next one lakh of rupees,
nine and three-quarters per centum on such portion of the next one lakh of rupees,

and

ten and a half per centum".

6 In Article 18 of the second schedule to the said Act, for the words and figures "section 326 of the Code of Civil Procedure" the words and figures "paragraph 17 of the second schedule to the Code of Civil Procedure, 1908" * shall be substituted.

Amendment of Schedule II, Article 18.

7. Nothing in this Act shall apply to any probate, letters of administration or certificate under the Indian Succession Act, 1925, † in respect of which the fee payable under the law for the time being in force has been paid before the commencement of this Act, but which has not issued.

Exemption of certain probates, etc.

APPENDIX C.

B & O. ACT NO, II OF 1922.

THE BIHAR AND ORISSA COURT FEES (AMENDMENT) ACT, 1922.

[The assent of the Government General to this Act was published in the Bihar and Orissa Gazette Extraordinary of the 21st August, 1912.]

An Act to amend the Court Fees Act, 1870.

WHEREAS it is expedient to amend the Court Fees Act, 1870, in its application to the Province of Bihar and Orissa in the manner hereinfter appearing; It is hereby enacted as follows —

1. (1) This act may be called the Bihar and Orissa Court Fees (Amendment) Act, 1922.

Short title, extent and commencement.

(2) It extends to the whole of Bihar and Orissa including Santhal Parganas.
(3) It shall come into force on the twenty-fourth day of August, 1922.

2. In paragraph 3 of section 4 of the Court Fees Act, 1870, as amended by subsequent legislation and hereinafter called the principal Act, for the word "two" shall be substituted the word "one".

Amendment of section 4

3. In clause (*a*) of section 7 (*v*) of the principal Act, for the word "ten" shall be substituted the word "twenty" and in clause (*b*) of the said section for the word "five" shall be substituted the word "ten".

Amendment of section 7.

4. In section 17 of the principal Act, after the words "of appeal" in both places where they occur the words "or of cross-objection" shall be inserted

Amendment of section 17.

5. In section 18 of the principal Act, for the words "a fee of eight annas" the words "a fee of twelve annas" shall be substituted

Amendment of section 18

6. In item (*viii*) of section 19 of the principal Act for the words "one thousand rupees" the "words two thousand rupees" shall be substituted.

Amendment of section 19

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* Act V of 1908 † XXXIX of 1925.

Amendment of Article 1 of Schedule I.

7. (1) In Article 1 of Schedule I of the principal Act, for the entry in the first column the following entry shall be substituted, namely :—

"1. Plaint, written statement, pleading a set off or counter-claim or memorandum of appeal or of cross-objection, not otherwise provided for in this Act, presented to any Civil or Revenue Court except those mentioned in section 3".

(2) For the "proper fees" set out in the third column of the said Schedule I and shown opposite Article I in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted.

(3) The proviso in Article I of the said Schedule I shall be omitted.

Amendment of Articles 6, 7, 8 and 9 of Schedule I.

8. For the "proper fees" set out in Schedule I of the principal Act for Articles 6, 7, 8 and 9 and shown in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted.

Amendment of Article 11 of Schedule I.

9. For the entries above the proviso in the second column, and for the entries in the third column, in Article 11 of Schedule I of the principal Act : the following shall be substituted, namely :—

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees on such amount or value up to ten thousand rupees,	Two per centum.
and	
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,	Three per centum.
and	
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,	Four per centum.
and	
when such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum."

Amendment of Article 12 of Schedule 1.

10. For the entry in the second column of Article 12 of Schedule 1 of the principal Act, and for the first paragraph in the third column of the said Article, the following shall be substituted :—

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, on such amount or value up to ten thousand rupees,	Two per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, three per centum.
and	
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees, up to fifty thousand rupees,	Three per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of Act, four-and-a-half per centum.

and when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,	Four per centum, and on the amount or value or any debt or security to which the certificate is extended under section 10 of the Act, six per centum.
and when such amount or value exceeds a lakh of rupees, on the portion of such amount or value, which is in excess of one lakh of rupees.	Five per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, seven-and-a-half per centum.

Amendment of table of rates in Schedule I.

11. For the table of rates of *advalorem* fees annexed to Schedule I of the principal Act, the table set forth in Schedule B of this Act shall be substituted.

Amendment of Schedule II.

12. (1) In the first column of the said Schedule II and after the words "memorandum of appeal" in Articles 5, 11, 17, 20 and 21 the words "or of cross-objection" shall be inserted.

(2) For the "proper fees" set out in the said Schedule II, and shown in Schedule C of this Act, the "proper fees" shown against them in the said second column of the said Schedule C shall be substituted.

Exemption of certain probates, letters of administration and certificates.

13. Nothing in this Act shall apply to any probate, letters of administration or certificate under the Succession Certificate Act, 1889, in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued

SCHEDULE A.

[*See* sections 7 (3) and 8 of the Bihar and Orissa Court Fees (Amendment) Act, 1922]

Proper fees set out in Schedule I of the principal Act.		Proper fess to be substituted.
Article 1 ...	Twelve annas	One rupee
	Five rupees	Seven rupees and eight annas
	Ten rupees	Fifteen rupees
	Fifteen rupees	Twenty-two rupees and eight annas
	Twenty rupees	Thirty rupees
	Twenty five rupees ...	Thirty seven rupees and eight annas.
Article 6 ...	Four annas	Six annas.
	Eight annas	Twelve annas.
	One rupee	One rupee and eight annas

Proper fees set out in Schedule I of the principal Act.		Proper fees to be substituted.
Article 7 ...	Eight annas	Twelve annas.
	One rupee	One rupee and eight annas.
	Four rupees	Six rupees.
Article 8 ...	The amount of the duty chargeable on the original.	One-and-a-half times the amount of the duty chargeable on the original.
	Eight annas	Twelve annas.
Article 9 ...	Eight annas	Twelve annas.

SCHEDULE B.

TABLE OF RATES OF *ADVALOREM* FEES LEVIABLE ON THE INSTITUTION OF SUITS.

[*See* section 11 of the Bihar and Orissa Court Fees (Amendment) Act, 1922]

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee	When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A.	Rs	Rs.	Rs. A.
...	5	0 6	180	190	16 8
5	10	0 12	190	200	17 8
10	15	1 2	200	210	18 8
15	20	1 8	210	220	19 8
20	25	1 14	220	230	20 8
25	30	2 4	230	240	21 8
30	35	2 10	240	250	22 8
35	40	3 0	250	260	23 8
40	45	3 6	260	270	24 8
45	50	3 12	270	280	25 8
50	55	4 2	280	290	26 8
55	60	4 8	290	300	27 8
60	65	4 14	300	310	28 8
65	70	5 4	310	320	29 8
70	75	5 10	320	330	30 8
75	80	6 0	330	340	31 8
80	85	6 6	340	350	32 8
85	90	6 12	350	360	33 8
90	95	7 2	360	370	34 8
95	100	7 8	370	380	35 8
100	110	8 8	380	390	36 8
110	120	9 8	390	400	37 8
120	130	10 8	400	420	38 8
130	140	11 8	410	420	39 8
140	150	12 8	420	430	40 8
150	160	13 8	430	440	41 8
160	170	14 8	440	450	42 8
170	180	15 8	450	460	43 8

When amount or value of the ubject-matter exceeds.	But does not exceed.	Proper Fee.	When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A.	Rs	Rs.	Rs. A.
460	470	44 8	1,100	1,200	112 8
470	480	45 8	1,200	1,300	120 0
480	490	46 8	1,300	1,400	127 8
490	500	47 8	1,400	1,500	135 0
500	510	48 8	1,500	1,600	142 8
510	520	49 8	1,600	1,700	150 0
520	530	50 8	1,700	1,800	157 8
530	540	51 8	1,800	1,900	165 0
540	550	52 8	1,900	2,000	172 8
550	560	53 8	2,000	2,100	180 0
560	570	54 8	2,100	2,200	187 8
570	580	55 8	2,200	2,300	195 0
580	590	56 8	2,300	2,400	202 8
590	600	57 8	2,400	2,500	210 0
600	610	58 8	2,500	2 600	217 8
610	620	59 8	2,600	2,700	225 0
620	630	60 8	2,700	2,800	232 8
630	640	61 8	2,800	2,900	240 0
640	650	62 8	2,900	3,000	247 8
650	660	63 8	3,000	3,100	255 0
660	670	64 8	3,100	3,200	262 8
670	680	65 8	3,200	3,300	270 0
680	690	66 8	3,300	3,400	277 8
690	700	67 8	3,400	3,500	285 0
700	710	68 8	3,500	3,600	292 8
710	720	69 8	3,600	3,700	300 0
720	730	70 8	3,700	3,800	307 8
730	740	71 8	3,800	3,900	315 0
740	750	72 8	3 900	4,000	322 8
750	760	73 8	4,000	4,100	330 0
760	770	74 8	4,100	4,200	337 8
770	780	75 8	4,200	4,300	345 0
780	790	76 8	4 300	4,400	352 8
790	800	77 8	4,400	4,500	360 0
800	810	78 8	4,500	4,600	367 8
810	820	79 8	4,600	4,700	375 0
820	830	80 8	4,700	4,800	382 8
830	840	81 8	4,800	4,900	390 0
840	850	82 8	4,900	5,000	397 8
850	860	83 8	5,000	5,250	412 8
860	870	84 8	5,250	5,500	427 8
870	880	85 8	5,500	5 750	442 8
880	890	86 8	5,750	6,000	457 8
890	900	87 8	6 000	6,250	472 8
900	910	88 8	6,250	6,500	487 8
910	920	89 8	6,500	6,750	502 8
920	930	90 8	6,750	7,000	517 8
930	940	91 8	7,000	7,250	532 8
940	950	92 8	7,250	7,500	547 8
950	960	93 8	7,500	7,750	562 8
960	970	94 8	7,750	8,000	577 8
970	980	95 8	8,000	8,250	592 8
980	990	96 8	8,250	8,500	607 8
990	1,000	97 8	8,500	8,750	622 8
1,000	1,100	105 0	8,750	9,000	637 8

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.		When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.	
Rs.	Rs	Rs.	A.	Rs.	Rs.	Rs.	A.
9,000	9,250	652	8	38,000	40,000	1,597	8
9,250	9,500	667	8	40,000	42,000	1,627	8
9,500	9,750	682	8	42,000	44,000	1,657	8
9,750	10,000	697	8	44,000	46,000	1,687	8
10,000	10,500	720	0	46,000	48,000	1,717	8
10,500	11,000	742	8	48,000	50,000	1,747	8
11,000	11,500	765	0	50 000	55,000	1,785	0
11,500	12,000	787	8	55,000	60,000	1,822	8
12,000	12,500	810	0	60,000	65,000	1,860	0
12,500	13 000	832	8	65,000	70,000	1,897	8
13 000	13,500	855	0	70,000	75,000	1,935	0
13,500	14,000	877	8	75,000	80,000	1,972	8
14,000	14,500	900	0	80,000	85,000	2,010	0
14,500	15,000	922	8	85 000	90,000	2,047	8
15,000	15,500	945	0	90,000	95,000	2,085	0
15,500	16,000	967	8	95,000	1,00,000	2,122	8
16,000	16,500	990	0	1,00,000	1,05,000	2,160	0
16,500	17,000	1,012	8	1,05,000	1,10,000	2,197	8
17,000	17,500	1,035	0	1,10,000	1,15,000	2,235	0
17,500	18,000	1,057	8	1,15,000	1,20,000	2,272	8
18,000	18,500	1,080	0	1,20,000	1,25,000	2,310	0
18,500	19,000	1,102	8	1,25,000	1 30,000	2,347	8
19,000	19,500	1,125	0	1,30,000	1,35,000	2,385	0
19,500	20,000	1,147	8	1,35,000	1,40,000	2,422	8
20,000	21,000	1,177	8	1,40 000	1,45,000	2,460	0
21,000	22,000	1,207	8	1,45,000	1,50,000	2,497	8
22,000	23,000	1,237	8	1,50,000	1,55,000	2,535	0
23,000	24,000	1,267	8	1,55,000	1,60,000	2,572	8
24,000	25,000	1,297	8	1,60,000	1,65,000	2,610	0
25,000	26,000	1,327	8	1,65,000	1,70,000	2,647	8
26,000	27,000	1,357	8	1,70,000	1,75,000	2,685	0
27,000	28,000	1 387	8	1,75,000	1,80,000	2,722	8
28,000	29,000	1,417	8	1,80,000	1,85,000	2,760	0
29,000	30,000	1,447	8	1,85,000	1,90,000	2,797	8
30,000	32,000	1,477	8	1,90,000	1,95,000	2 835	0
32,000	34,000	1,507	8	1,95 000	2,00,000	2,872	8
34,000	36,000	1,537	8	2,00,000	2,05,000	2,910	0
36,000	38,000	1,567	8				

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees or part thereof, for example, when the amount or value of the subject-matter exceeds.

3,00,000	...	3,660	0	8,00,000	...	7,410	0
4,00,000	...	4,410	0	9,00,000	...	8,160	0
5,00,000	...	5,160	0	10,00,000	...	8,910	0
6,00,000	....	5,910	0	11,00,000	...	9,660	0
7,00,000	...	6,660	0				

———

SCHEDULE C.

[*See* section 12 (4) of the Bihar and Orissa Court Fees (Amendment) Act, 1922.]

Proper fees set out in Schedule I of the principal Act.		Proper fees to be substituted.
Article 1	One anna	Two annas.
	Eight annas	Twelve annas.
	One rupee	One rupee and eight annas.
	Two rupees	Three rupees.
Article 1A	Twelve annas in addition to any fee levied on the application under clause (*a*) clause (*b*) or clause (d) of Article 1 of this Schedule.	One rupee in addition to any fee levied on the application under clause (*a*) clause (*b*) or clause (*d*) of Article 1 of this Schedule.
Article 10	Eight annas	One rupee.
	One rupee	Two rupees.
	Two rupees	Three rupees.
Article 12	Eight annas	One rupee.
	Two rupees	Four rupees.
Article 13	Five rupees	Ten rupees.
Article 14	Five rupees	Ten rupees.
Articles 17, 18 and 19	Ten rupees	Fifteen rupees
Articles 20 and 21	Twenty rupees	Thirty rupees.

APPENDIX D.

CENTRAL PROVINCES ACT NO. XVI OF 1935.

THE COURT FEES CENTRAL PROVINCES AMENDMENT ACT, 1935.

[PUBLISHED IN THE CENTRAL PROVINCES GAZETTE, DATED THE 7TH JUNE, 1935.]

An Act to amend the Court Fees Act, 1870, with reference to the scale of Court-fees in the Central Provinces

Preamble

WHEREAS it is expedient to revise the scale of Court-fees for the Central Provinces by amendment of the Court Fees Act, 1935, in its application to the Central Provinces, in the manner hereinafter appearing ;

AND WHEREAS the previous sanction of the Governor required under section 80C of the Government of India Act has been obtained to the passing of this Act ; It is hereby enacted as follows :—

Short title, commencement and duration

1 (1) This Act may be called the Court Fees (Central Provinces Amendment) Act, 1935.

(2) It shall come into force on such date as the Local Government may, by notification, appoint in this behalf and shall remain in force to the 31st day of March 1943

Application of Act VII of 1870.

2, The Court Fees Act, 1870* (hereinafter referred to as the said Act), shall be amended, in its application to the Central Provinces, in the manner hereinafter provided.

* VII of 1870.

Amendment of section 7, Act VII of 1870.

3. In section 7 of the said Act—

(*a*) after the word "appeal" in paragraph iv, the words "with a minimum fee of rupees five in the case of suits falling under clause (*c*)" shall be inserted ;

(*b*) in clause (*a*) of paragraph v, between the words "or" and "forms part", the words "where the land" shall be inserted ;

(*c*) in clause (*b*) of paragraph v—

(i) between the words "or" and "forms part", the words "where the land" shall be inserted ; and

(ii) for the word "five" the words "seven and half" shall be substituted ; and

(*d*) for paragraph ix, the following paragraph shall be substituted, namely :—

"ix. (*a*) In suits against a mortgagee for the recovery of the property mortgaged,—

according to the principal money expressed to be secured by the instrument of mortgage ; and

(*b*) in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute,—

according to the amount claimed as due at the date of presenting the plaint."

Amendment of Article. I, Schedule I, Act VII of 1870.

4. In Schedule I to the said Act—

(*a*) before the word "presented" in the first column of article I, the words "in any suit between landlord and tenant for an arrear of rent" shall be inserted ;

(*b*) after article I, the following article shall be inserted, namely :—

1-A. Plaint, written statement pleading a set-off or counter claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3, in suits other, than those provided for in Article 1.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to one thousand rupees	Twelve annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Six rupees.
	When such amount or value exceeds five thousand rupees, for every two hundred rupees or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Ten rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty rupees.

When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees
When such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof, in excess of fifty thousand rupees ·	Thirty rupees.
Provided that the maximum fee leviable shall not exceed five thousand rupees" ;	

Amendment of Article 6, clauses (a) and (b), Schedule I, Act VII of 1870.

(c) in the third column of Article 6 for the words "Four annas" opposite clauses (a), the words "Six annas", and for the words "Eight annas" opposite clause (b), the words "Twelve annas" shall be substituted ;

Amendment of Article 7, Schedule I, Act VII of 1870.

(d) in the third column of Article 7 for the words "Eight annas" opposite clause (a), the words "Twelve annas", and for the words "One rupee" opposite clause (b), the words "One rupee and eight annas" shall be substituted ;

Amendment of Articles 11 and 12, Schedule I, Act VII of 1870.

(e) for Articles 11 and 12 and the entries in the second and third columns thereof, the following articles and entries shall be substituted, namely :—

"II. Probate of a Will or letters of administration with or without Will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees but does not exceed five thousand rupees	Two per centum on such amount or value.
	When such amount or value exceeds five thousand rupees but does not exceed ten thousand rupees.	One hundred rupees plus two-and-a-half per-centum on the amount or value in excess of five thousand rupees
	When such amount or value exceeds ten thousand rupees	Two hundred and fifty rupees plus three per centum on the amount or value in excess of ten thousand rupees

Provided that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925,* or under Bombay Regulation VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.

* XXXIX of 1925

12. Certificate under Part X of the Indian Succession Act, 1925 (XXXIX of 1925).	When the amount or value of any debt or security specified in the certificate under section 374 of the Act exceeds one thousand rupees but does not exceed five thousand rupees.	Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
	When such amount or value exceeds five thousand rupees but does not exceed ten thousand rupees.	One hundred rupees plus two-and-a-half per centum on the amount or value in excess of five thousand rupees and four-and-a-half per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
	When such amount or value exceeds ten thousand rupees.	Two hundred and fifty rupees plus three per centum on the amount or value in excess of tent housand rupees and seven and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act." ;

Amendment of Table of rates of *advalorem* fees.

(*f*) for the Table of rates of *advalorem* fees leviable on the institution of suits, the following Table shall be substituted, namely :—

"*Table of rates of advalorem fees leviable on the institution of suits.*

When the amount or value of the subject matter exceeds	But does not exceed	Proper Fee.	When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. a p	Rs	Rs.	Rs a. p.
	5	0 6 0	140	150	11 4 0
5	10	0 12 0	150	160	12 0 0
10	15	1 2 0	160	170	12 12 0
15	20	1 8 0	170	180	13 8 0
20	25	1 14 0	180	190	14 4 0
25	30	2 4 0	190	200	15 0 0
30	35	2 10 0	200	210	15 12 0
35	40	3 0 0	210	220	16 8 0
40	45	3 6 0	220	230	17 4 0
45	50	3 12 0	230	240	18 0 0
50	55	4 2 0	240	250	18 12 0
55	60	4 8 0	250	260	19 8 0
60	65	4 14 0	260	270	20 4 0
65	70	5 4 0	270	280	21 0 0
70	75	5 10 0	280	290	21 12 0
75	80	6 0 0	290	300	22 8 0
80	85	6 6 0	300	310	23 4 0
85	90	6 12 0	310	320	24 0 0
90	95	7 2 0	320	330	24 12 0
95	100	7 8 0	330	340	25 8 0
100	110	8 4 0	340	350	26 4 0
110	120	9 0 0	350	360	27 0 0
120	130	9 12 0	360	370	27 12 0
130	140	10 8 0	370	380	28 8 0

When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee	When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. a p.	Rs.	Rs	Rs a. p.
380	390	29 4 0	950	960	72 0 0
390	400	30 0 0	960	970	72 12 0
400	410	30 12 0	970	980	73 8 0
410	420	31 8 0	980	990	74 4 0
420	430	32 4 0	990	1,000	75 0 0
430	440	33 0 0	1,000	1,100	81 0 0
440	450	33 12 0	1,100	1,200	87 0 0
450	460	34 8 0	1,200	1,300	93 0 0
460	470	35 4 0	1,300	1,400	99 0 0
470	480	36 0 0	1,400	1,500	105 0 0
480	490	36 12 0	1,500	1,600	111 0 0
490	500	37 8 0	1,600	1,700	117 0 0
500	510	38 4 0	1,700	1,800	123 0 0
510	520	39 0 0	1,800	1,900	129 0 0
520	530	39 12 0	1,900	2,000	135 0 0
530	540	40 8 0	2,000	2,100	141 0 0
540	550	41 4 0	2,100	2,200	147 0 0
550	560	42 0 0	2,200	2,300	153 0 0
560	570	42 12 0	2,300	2,400	159 0 0
570	580	43 8 0	2,400	2,500	165 0 0
580	590	44 4 0	2,500	2,600	171 0 0
590	600	45 0 0	2,600	2,700	177 0 0
600	610	45 12 0	2,700	2,800	183 0 0
610	620	46 8 0	2,800	2,900	189 0 0
620	630	47 4 0	2,900	3,000	195 0 0
630	640	48 0 0	3,000	3,100	201 0 0
640	650	48 12 0	3,100	3,200	207 0 0
650	660	49 8 0	3,200	3,300	213 0 0
660	670	50 4 0	3,300	3,400	219 0 0
670	680	51 0 0	3,400	3,500	225 0 0
680	690	51 12 0	3,500	3,600	231 0 0
690	700	52 8 0	3,600	3,700	237 0 0
700	710	53 4 0	3,700	3,800	243 0 0
710	720	54 0 0	3,800	3,900	249 0 0
720	730	54 12 0	3,900	4,000	255 0 0
730	740	55 8 0	4,000	4,100	261 0 0
740	750	56 4 0	4,100	4,200	267 0 0
750	760	57 0 0	4,200	4,300	273 0 0
760	770	57 12 0	4,300	4,400	279 0 0
770	780	58 8 0	4,400	4,500	285 0 0
780	790	59 4 0	4,500	4,600	291 0 0
790	800	60 0 0	4,600	4,700	297 0 0
800	810	60 12 0	4,700	4,800	303 0 0
810	820	61 8 0	4,800	4,900	309 0 0
820	830	62 4 0	4,900	5,000	315 0 0
830	840	63 0 0	5,000	5,200	325 0 0
840	850	63 12 0	5,200	5,400	335 0 0
850	860	64 8 0	5,400	5,600	345 0 0
860	870	65 4 0	5,600	5,800	355 0 0
870	880	66 0 0	5,800	6,000	365 0 0
880	890	66 12 0	6,000	6,200	375 0 0
890	900	67 8 0	6,200	6,400	385 0 0
900	910	68 4 0	6,400	6,600	395 0 0
910	920	69 0 0	6,600	6,800	405 0 0
920	930	69 12 0	6,800	7,000	415 0 0
930	940	70 8 0	7,000	7,200	425 0 0
940	950	71 4 0	7,200	7,400	435 0 0

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.	When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. a. p.	Rs.	Rs.	Rs. a. p.
7,400	7,600	445 0 0	17,000	17,500	865 0 0
7,600	7,800	455 0 0	17,500	18,000	885 0 0
7,800	8,000	465 0 0	18,000	18,500	905 0 0
8,000	8,200	475 0 0	18,500	19,000	925 0 0
8,200	8,400	485 0 0	19,000	19,500	945 0 0
8,400	8,600	495 0 0	19,500	20,000	965 0 0
8,600	8,800	505 0 0	20 000	21,000	995 0 0
8,800	9,000	515 0 0	21,000	22,000	1,025 0 0
9,000	9,200	525 0 0	22,000	23,000	1 055 0 0
9,200	9,400	535 0 0	23,000	24,000	1,085 0 0
9,400	9,600	545 0 0	24,000	25,000	1,115 0 0
9,600	9,800	555 0 0	25,000	26,000	1,145 0 0
9,800	10,000	565 0 0	26,000	27,000	1,175 0 0
10,000	10,500	585 0 0	27,000	28,000	1,205 0 0
10,500	11,000	605 0 0	28,000	29 000	1,235 0 0
11,000	11,500	625 0 0	29,000	30,000	1,265 0 0
11,500	12,000	645 0 0	30,000	32,000	1,295 0 0
12,000	12,500	665 0 0	32,000	34,000	1,325 0 0
12,500	13,000	685 0 0	34,000	36,000	1,355 0 0
13,000	13,500	705 0 0	36,000	38,000	1,385 0 0
13,500	14,000	725 0 0	38,000	40,000	1,415 0 0
14,000	14,500	745 0 0	40,000	42,000	1,445 0 0
14,500	15,000	765 0 0	42,000	44,000	1,475 0 0
15 000	15,500	785 0 0	44,000	46,000	1,505 0 0
15,500	16 000	805 0 0	46,000	48,000	1,535 0 0
16,000	16,500	825 0 0	48,000	50,000	1,565 0 0
16 500	17,000	845 0 0			

When the amount or value of the subject-matter exceeds fifty thousand rupees, for every five thousand rupees or part thereof in excess of fifty thousand rupees—Thirty rupees :

Provided that the maximum fee leviable shall not exceed five thousand rupees."

5 In Schedule II to the said Act—

Amendment of Schedule II, Article 1, clause (*a*), Act VII of 1870

(*a*) in the third column of Article I, for the words "One anna" opposite clause (*a*), the words "Two annas" shall be substituted ;

Amendment of Schedule II, Article 1, clause (*b*), Act VII of 1870.

(*b*) for clause (*b*) of Article 1 in the second column and the entry opposite it in the third column, the following clause and entries shall be substituted, namely :—

	"(*b*) When containing a complaint of charge of any offence other than an offence for which police *officers may, under* the Code of Criminal Procedure, 1898, arrest without warrant, and presented to any Criminal Court ;	Twelve annas.

or for orders of arrest or attachment before judgment or *for temporary injunctions*;	Two rupees.
or for compensation for arrest or attachment before judgment or in respect of a temporary injunction obtained on insufficient grounds;	Two rupees.
or for the appointment of a receiver in a case in which the applicant has no present right of possession of the properties in dispute;	Five rupees.
or for setting aside decrees passed *ex parte* and for review of orders dismissing suits for default;	Twelve annas.
or when presented to a Civil Criminal or Revenue Court, or to a Collector, or any Revenue Officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity and not otherwise provided for by this Act;	Twelve annas.
or to deposit in Court revenue or rent;	Eight annas.
or for determination by a Court of the amount of compensation to be paid by landlord to his tenant.";	Eight annas.

(*c*) for clauses (*c*) and (*d*) in the second column of Article I and for the entries in the third column opposite these clauses, the following clauses and entries shall be substituted, namely :—

Amendment of Schedule II, Article II, clauses (*c*) and (*d*), Act VII of 1870.

"(*c*) When presented to a Commissioner of Revenue or to any Chief Officer charged with the executive administration of a division, and not otherwise provided for by this Act	One rupee and eight annas.
(*d*) When presented to a Chief Controlling Revenue-Authority or Executive Authority and not otherwise provided for by this Act.	Two rupees.
(*e*) When presented to the Court of the Judicial Commissioner—	
(i) otherwise than under section 25 of the Provincial Small Causes Courts Act, 1887, * or section 115 of the Code of Civil Procedure, 1908; †	Two rupees.

*IX of 1887.

† V of 1908.

	(ii) under section 25 of the Provincial Small Causes Courts Act, 1887;*	Five rupees.
	(iii) under section 115 of the Code of Civil Procedure, 1908.†	Five rupees.

Amendment of Schedule II, Article 10, clauses (*a*) and (*c*) Act VII of 1870.

(*d*) in the third column of Article 10, for the words "Eight annas" opposite clause (*a*), the words "Twelve annas", and for the words "Two rupees" opposite clause (*c*), the words "Two rupees and eight annas" shall be substituted;

Amendment of Schedule II, Article 11, clauses (*a*) and (*b*), Act VII of 1870.

(*e*) in the third column of Article 11, for the words "Eight annas" opposite clause (*a*), the words 'One rupee", and for the words "Two rupees" opposite clause (*b*), the words "Four rupees" shall be substituted;

Amendment of Schedule II, Articles 17, 18 and 19, Act VII of 1870.

(*f*) for Articles 17, 18 and 19, the following articles shall be substituted, namely:—

"17 Plaint or memorandum of appeal in each of the following suits — (i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court; (ii) to alter or cancel any entry in a register of the names of proprietors or revenue paying estates; (iii) to obtain a declaratory decree where no consequential relief is prayed; (iv) to set aside an award; (v) to set aside an adoption; (vi) every other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act.	..	Fifteen rupees
Applications — (*a*) under paragraph 17 or 20 of the Second Schedule to the Code of Civil Procedure, 1908 (V of 1908);	...	One rupee.
(*b*) for opinion or advice or for discharge from a trust, or for appointment of new trustees, under section 34, 72, 73 or 74 of the Indian Trusts Act, 1882 (II of 1882);	...	Ten rupees
(*c*) for the winding up of a company, under section 166 of the Indian Companies Act, 1913 (VII of 1913).	...	Ten rupees.

* IX of 1887. † V of 1908.

(d) for the appointment or declaration of a person as guardian of the person or property, or both, of minors, under the Guardians and Wards Act, 1890 (VIII of 1890)	...	Two rupees.
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908, Order 36, Rule (1)	...	Fifteen rupees".

6. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act but which have not been issued.

APPENDIX E.

MADRAS ACT V OF 1922.

THE MADRAS COURT FEES (AMENDMENT) ACT, 1922.

Received the assent of the Governor on the 30th March, 1922, and that of the Governor General on the 17th April 1922, and Published in Part IV of the Madras Gazette, dated 18th April 1922.

An Act to amend the Court Fees Act, 1870

WHEREAS it is expedient to amend the Court Fees Act, 1870, in its application to the Presidency of Madras ; It is hereby enacted as follows :—

Short title and application

1. (a) This Act may be called the Madras Court Fees (Amendment) Act, 1922

(b) It extends to the whole of the Presidency of Madras

Interpretation Clause 1870

2. (1) In this Act "the Principal Act" shall mean "the Court Fees Act, 1870."

(2) In this Act and in the principal Act, unless there is anything repugnant in the subject or context, "Memorandum of appeal" shall include memorandum of cross objection.

Amendment of section 5 of the principal Act.

3. In the second paragraph of section 5 of the principal Act, the words 'Registrar' and 'Chief Judge' shall be substituted for 'clerk of the Court, and 'first Judge' respectively

Amendment of section 7

4. In section 7 of the principal Act, the words "except suits for relief under section 14 of the Religious Endownments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908," shall be added between the words "mentioned" and "shall."

Amendment of section 7 (ii).

5. In section 7 (ii) of the principal Act, after the words "shall be deemed to be" the words "in suits for maintenance, the amount claimed to be payable for one year and, in other suits" shall be added.

Addition of a proviso to section 7 (iv).

6. [illegible] after the words "[illegible]" section 7, paragra[illegible] :—

"Provided that in suits coming under sub clause (c), in cases where the relief sought is with reference to any immovable property, such valuation shall not be less than half the value of the immovable property calculated in the manner provided for by paragraph (*v*) of this section."

Addition to section 7.

7. In section 7 of the principal Act between paragraph (iv) and (v) the following paragraph shall be added as (iv) A :—

"In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value, according to the value of the subject-matter of the suit, and such value shall be deemed to be—

If the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed.

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property."

Notes—*Vide* A. I. R. 1935 Mad. 671

Amendment of section 7 (v)

8. In section 7 (*v*) of the principal Act :—

in (*a*) for the word "ten" the word "twenty" shall be substituted ;

in (*b*) for the word "five" the word "ten" shall be substituted ;
and after clause (*d*) the following proviso shall be substituted for the existing proviso :—

"Provided that if rules are framed under section 3 of the Suits Valuation Act, 1887, for determining the value of land for the purposes of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph"

Amendment of section 11.

9. For the second paragraph of section 11 of the principal Act the following paragraph shall be substituted :—

"Where a decree directs an enquiry as to mesne profits which have accrued on the property during a period prior to the institution of the suit if the profits ascertained on such enquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid If the additional fee is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.

"Where a decree directs an enquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such enquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor."

Amendment of section 18.

10. In section 18 of the principal Act for the words "eight annas" the words "one rupee" shall be substituted.

Amendment of Schedules I and II.

11. For Schedules I and II of the principal Act, the following Schedules shall be substituted :—

SCHEDULE I.

Advalorem Fees

Number.		Proper Fee
1. Plaint, or written statement pleading a set-off or counter claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Eight annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees up to hundred rupees.	Nine annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to one thousand rupees.	One rupee two annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees up to five thousand rupees.	Seven rupees, eight annas.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees eight annas.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Thirty rupees
2. Plaint, or written statement, pleading a set-off or counter-claim presented to Court, outside the Presidency Town in any suit of the nature cognizable by Court of Small Causes, when the amount or value of the subject-matter does not exceed Rs. 500.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	Twelve annas.

Addition of a proviso to section 7 (iv).

6. The following shall be added after the words "Memorandum of appeal" in section 7, paragraph (iv) of the principal Act :—

"Provided that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any immovable property, such valuation shall not be less than half the value of the immovable property calculated in the *manner provided for by paragraph (v) of this section.*"

Addition to section 7.

7. In section 7 of the principal Act between paragraph (iv) and (v) the following paragraph shall be added as (iv) A :—

"In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value, according to the value of the subject-matter of the suit, and such value shall be deemed to be—

If the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property."

Notes—*Vide* A. I. R. 1935 Mad. 671

8. In section 7 (*v*) of the principal Act :—

Amendment of section 7 (v)

in (*a*) for the word "ten" the word "twenty" shall be substituted ;

In (*b*) for the word "five" the word "ten" shall be substituted ;
and after clause (*d*) the following proviso shall be substituted for the existing proviso :—

"Provided that if rules are framed under section 3 of the Suits Valuation Act, 1887, for determining the value of land for the purposes of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph."

Amendment of section 11.

9. For the second paragraph of section 11 of the principal Act the following paragraph shall be substituted :—

"*Where a decree directs an enquiry as to mesne profits which have accrued* on the property during a period prior to the institution of the suit if the profits ascertained on such enquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, *unless the Court, for sufficient cause, extends the time for payment.*

"Where a decree directs an enquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such enquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been *instituted therefor.*"

Amendment of section 18.

10. In section 18 of the principal Act for *the words "eight annas" the words "one rupee"* shall be substituted.

Amendment of Schedules I and II.

11. For Schedules I and II of the principal Act, the following Schedules shall be substituted :—

SCHEDULE I.

Advalorem Fees

Number.		Proper Fee.
1. Plaint, or written statement pleading a set-off or counter claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Eight annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees up to hundred rupees.	Nine annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to one thousand rupees.	One rupee two annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees up to five thousand rupees.	Seven rupees, eight annas.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees eight annas.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees	Thirty rupees
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Thirty rupees
2. Plaint, or written statement, pleading a set-off or counter-claim presented to Court, outside the Presidency Town in any suit of the nature cognizable by Court of Small Causes, when the amount or value of the subject-matter does not exceed Rs. 500.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	Twelve annas.

Number.		Proper Fee.
3. Plaint in a suit for possession under (the Specific Relief Act, 1877, section 9).		An amount of one-half the scale of fee prescribed in article 1 above.
4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.		The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment, if presented before the ninetieth day from the date of the decree.		One-half of the fee leviable on the plaint or memorandum of appeal.
6. Copy or translation of a judgment or order not being or having the force of a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or office, or by any other Judicial or Executive Authority—	
	(a) If the amount or value of the subject-matter is fifty or less than fifty rupees.	Six annas.
	(b) If such amount or value exceeds fifty rupees.	Twelve annas.
	When such judgment or order is passed by a High Court.	One rupee eight annas.
6A. Copy of translation of a judgment or order of a Criminal Court.	......	Eight annas.
7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	Eight annas.
	(b) If such amount or value exceeds fifty rupees.	One rupee.
	When such decree or order is made by a High Court	Four rupees.
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn.	(a) When the stamp-duty chargeable on the original does not exceed eight annas	The amount of the duty chargeable on the original.
	(b) In any other case	Eight annas.
9. Copy of any revenue or judicial proceeding or order not otherwise provided	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.

Number.		Proper Fee.
for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or *office, or from* the office of any chief officer charged with the executive administration of a division.		
10. (*Repealed by the Guardians and Wards Act, 1890, VIII of 1890*).		
11 Probate of a Will or letters of administration with or without Will annexed.	When the amount or value of the property in respect of which the grant of probate *or letters is made exceeds one thousand* rupees, but does not exceed five thousand rupees.	Two per centum on such *amount or* value.
	When such amount or value exceeds five thousand rupees :	Three per centum on such amount or value.
	Provided that, when after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code, No. VIII of *1827 in* respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the *fee paid in respect of the former* grant.	
12. Certificate under the Succession Certificate Act, 1889.	*When the amount* or value of any debt or security specified in the certificate under section 8 of the Act does not exceed *five thousand rupees*	*Two per centum* on such amount or *value*, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
	When such amount or value exceeds five *thousand rupees.*	Three per centum on such amount or value, and four and a-half per centum

Number.		Proper Fee.
Certificate etc. (*concld*)		the amount or value of any debt or security to which the certificate is extended under section 10 of the Act. Note (1) The amount of a debt is its amount including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred. Whether the power is for the receiving of interest or dividends on or for the negotiation or transfer of security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

SCHEDULE I.

Table of Rates of Ad valorem Fees leviable.

(*a*) On plaints etc., mentioned in Article I of this Schedule.

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper Fee.		When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee.	
Rs.	Rs.	Rs.	A.	Rs	Rs.	Rs.	A.
0	5	0	8	410	420	47	3
5	10	1	1	420	430	48	5
10	15	1	10	430	440	49	7
15	20	2	3	440	450	50	9
20	25	2	12	450	460	51	11
25	30	3	5	460	470	52	13
30	35	3	14	470	480	53	15
35	40	4	7	480	490	55	1
40	45	5	0	490	500	56	3
45	50	5	9	500	510	57	5
50	55	6	2	510	520	58	7
55	60	6	11	520	530	59	9
60	65	7	4	530	540	60	11
65	70	7	13	540	550	61	13
70	75	8	6	550	560	62	15
75	80	8	15	560	570	64	1
80	85	9	8	570	580	65	3
85	90	10	1	580	590	66	5
90	95	10	10	590	600	67	7
95	100	11	3	600	610	68	9
100	110	12	5	610	620	69	11
110	120	13	7	620	630	70	13
120	130	14	9	630	640	71	15
130	140	15	11	640	650	73	1
140	150	16	13	650	660	74	3
150	160	17	15	660	670	75	5
160	170	19	1	670	680	76	7
170	180	20	3	680	690	77	9
180	190	21	5	690	700	78	11
190	200	22	7	700	710	79	13
200	210	23	9	710	720	80	15
210	220	24	11	720	730	82	1
220	230	25	13	730	740	83	3
230	240	26	15	740	750	84	5
240	250	28	1	750	760	85	7
250	260	29	3	760	770	86	9
260	270	30	5	770	780	87	11
270	280	31	7	780	790	88	13
280	290	32	9	790	800	89	15
290	300	33	11	800	810	91	1
300	310	34	13	810	820	92	3
310	320	35	15	820	830	93	5
320	330	37	1	830	840	94	7
330	340	38	3	840	850	95	9
340	350	39	5	850	860	96	11
350	360	40	7	860	870	97	13
360	370	41	9	870	880	98	15
370	380	42	11	880	890	100	1
380	390	43	13	890	900	101	3
390	400	44	15	900	910	102	5
400	410	46	1	910	920	103	7

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper Fee	When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs	Rs A.
920	930	104 9	6,500	6,750	517 7
930	940	105 11	6,750	7,000	532 7
940	950	106 13	7,000	7,250	547 7
950	960	107 15	7,250	7,500	562 7
960	970	109 1	7,500	7,750	577 7
970	980	110 3	7,750	8,000	592 7
980	990	111 5	8,000	8,250	607 7
990	1,000	112 7	8,250	8,500	622 7
1,000	1,100	119 15	8,500	8,750	637 7
1,100	1,200	127 7	8,750	9,000	652 7
1,200	1,300	134 15	9,000	9,250	667 7
1,300	1,400	142 7	9,250	9,500	682 7
1,400	1,500	149 15	9,500	9,750	697 7
1,500	1,600	157 7	9,750	10,000	712 7
1,600	1,700	164 15	10,000	10,250	734 15
1,700	1,800	172 7	10,500	11,000	757 7
1,800	1,900	179 15	11,000	11,500	779 15
1,900	2,000	187 7	11,500	12,000	802 7
2,000	2,100	194 15	12,000	12,500	824 15
2,100	2,200	202 7	12,500	13,000	847 7
2,200	2,300	209 15	13,000	13,500	869 15
2,300	2,400	217 7	13,500	14,000	892 7
2,400	2,500	224 15	14,000	14,500	914 15
2,500	2,600	232 7	14,500	15,000	937 7
2,600	2,700	239 15	15,000	15,500	959 15
2,700	2,800	247 7	15,500	16,000	982 7
2,800	2,900	254 15	16,000	16,500	1,004 15
2,900	3,000	262 7	16,500	17,000	1,027 7
3,000	3,100	269 15	17,000	17,500	1,049 15
3,100	3,200	277 7	17,500	18,000	1,072 7
3,200	3,300	284 15	18,000	18,500	1,094 15
3,300	3,400	292 7	18,500	19,000	1,117 7
3,400	3,500	299 15	19,000	19,500	1,139 15
3,500	3,600	307 7	19,500	20,000	1,162 7
3,600	3,700	314 15	20,000	21,000	1,192 7
3,700	3,800	322 7	21,000	22,000	1,222 7
3,800	3,900	329 15	22,000	23,000	1,252 7
3,900	4,000	337 7	23,000	24,000	1,282 7
4,000	4,100	344 15	24,000	25,000	1,312 7
4,100	4,200	352 7	25,000	26,000	1,342 7
4,200	4,300	359 15	26,000	27,000	1,372 7
4,300	4,400	367 7	27,000	28,000	1,402 7
4,400	4,500	374 15	28,000	29,000	1,432 7
4,500	4,600	382 7	29,000	30,000	1,462 7
4,600	4,700	389 15	30,000	32,000	1,492 7
4,700	4,800	397 7	32,000	34,000	1,522 7
4,800	4,900	404 15	34,000	36,000	1,552 7
4,900	5,000	412 7	36,000	38,000	1,582 7
5,000	5,250	427 7	38,000	40,000	1,612 7
5,250	5,500	442 7	40,000	42,000	1,642 7
5,500	5,750	457 7	42,000	44,000	1,672 7
5,750	6,000	472 7	44,000	46,000	1,702 7
6,000	6,250	487 7	46,000	48,000	1,732 7
6,250	6,500	502 7	48,000	50,000	1,762 7

When the amount or value of the subject-matter exceeds Rs. 50,000, for every five thousand rupees or part thereof, in excess of fifty thousand rupees,—thirty rupees.

SCHEDULE I. (*concluded*)

(*b*) On plaints, etc., mentioned in Article 2 of this Schedule

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.	When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A	Rs.	Rs.	Rs. A.
,,	5	0 6	200	210	15 12
5	10	0 12	210	220	16 8
10	15	1 2	220	230	17 4
15	20	1 8	230	240	18 0
20	25	1 14	240	250	18 12
25	30	2 4	250	260	19 8
30	35	2 10	260	270	20 4
35	40	3 0	270	280	21 0
40	45	3 6	280	290	21 12
45	50	3 12	290	300	22 8
50	55	4 2	300	310	23 4
55	60	4 8	310	320	24 0
60	65	4 14	320	330	24 12
65	70	5 4	330	340	25 8
70	75	5 10	340	350	26 4
75	80	6 0	350	360	27 0
80	85	6 6	360	370	27 12
85	90	6 12	370	380	28 8
90	95	7 2	380	390	29 4
95	100	7 8	390	400	30 0
100	110	8 4	400	410	30 12
110	120	9 0	410	420	31 8
120	130	9 12	420	430	32 4
130	140	10 8	430	440	33 0
140	150	11 4	440	450	33 12
150	160	12 0	450	460	34 8
160	170	12 12	460	470	35 4
170	180	13 8	470	480	36 0
180	199	14 4	480	490	36 12
190	200	15 0	490	500	37 8

SCHEDULE II

Fixed Fees.

Number.		Proper Fee.
1. Application or petition	(*a*) Where presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings ;	One anna.
	or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement ;	Two annas

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee	When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs A
920	930	104 9	6,500	6,750	517 7
930	940	105 11	6,750	7,000	532 7
940	950	106 13	7,000	7,250	547 7
950	960	107 15	7,250	7 500	562 7
960	970	109 1	7,500	7,750	577 7
970	980	110 3	7,750	8,000	592 7
980	990	111 5	8,000	8,250	607 7
990	1,000	112 7	8,250	8,500	622 7
1,000	1,100	119 15	8,500	8,750	637 7
1,100	1,200	127 7	8,750	9,000	652 7
1,200	1,300	134 15	9,000	9,250	667 7
1,300	1,400	142 7	9,250	9,500	682 7
1,400	1,500	149 15	9,500	9,750	697 7
1,500	1,600	157 7	9,750	10,000	712 7
1,600	1,700	164 15	10,000	10,250	734 15
1,700	1,800	172 7	10,500	11,000	757 7
1,800	1,900	179 15	11,000	11,500	779 15
1,900	2,000	187 7	11,500	12,000	802 7
2,000	2,100	194 15	12,000	12,500	824 15
2,100	2,200	202 7	12,500	13,000	847 7
2,200	2,300	209 15	13,000	13,500	869 15
2,300	2,400	217 7	13,500	14,000	892 7
2,400	2,500	224 15	14,000	14 500	914 15
2,500	2,600	232 7	14,500	15,000	937 7
2,600	2,700	239 15	15,000	15 500	959 15
2,700	2,800	247 7	15 500	16,000	982 7
2,800	2,900	254 15	16,000	16,500	1,004 15
2,900	3,000	262 7	16,500	17,000	1,027 7
3,000	3,100	269 15	17,000	17,500	1,049 15
3,100	3,200	277 7	17,500	18,000	1,072 7
3,200	3,300	284 15	18,000	18,500	1,094 15
3,300	3,400	292 7	18,500	19,000	1,117 7
3,400	3 500	299 15	19,000	19,500	1,139 15
3,500	3,600	307 7	19,500	20,000	1,162 7
3,600	3,700	314 15	20,000	21,000	1,192 7
3,700	3,800	322 7	21,000	22,000	1,222 7
3,800	3,900	329 15	22,000	23,000	1,252 7
3,900	4,000	337 7	23,000	24,000	1,282 7
4,000	4,100	344 15	24,000	25,000	1,312 7
4,100	4,200	352 7	25,000	26,000	1,342 7
4,200	4,300	359 15	26,000	27,000	1,372 7
4,300	4,400	367 7	27,000	28,000	1,402 7
4,400	4,500	374 15	28,000	29,000	1,432 7
4,500	4,600	382 7	29,000	30,000	1,462 7
4,600	4,700	389 15	30,000	32,000	1,492 7
4,700	4,800	397 7	32,000	34,000	1,522 7
4,800	4,900	404 15	34,000	36,000	1 552 7
4,900	5,000	412 7	36,000	38,000	1,582 7
5,000	5 250	427 7	38,000	40,000	1,612 7
5,250	5 500	442 7	40,000	42,000	1,642 7
5,500	5,750	457 7	42,000	44,000	1,672 7
5,750	6,000	472 7	44,000	46,000	1,702 7
6,000	6,250	487 7	46,000	48,000	1,732 7
6,250	6,500	502 7	48,000	50,000	1,762 7

When the amount or value of the subject-matter exceeds Rs. 50,000, for every five thousand rupees or part thereof, in excess of fifty thousand rupees,—thirty rupees.

Number.		Proper Fee.
Application or petition—(*contd*)	(*b*) when the value of the suit or proceeding exceeds one thousand rupees.	Ten rupees.
	(*ii*) When presented to a High Court otherwise than under that section.	Two rupees
1A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (*a*), clause (*b*) or clause (*d*) of article 1 of this Schedule.
2. Application for leave to sue as a pauper.	....	Eight annas.
3. Application for leave to appeal as a pauper.	(*a*) When presented to a District Court or a Sub-Court.	One rupee.
	(*b*) When presented to a Commissioner or a High Court.	Two rupees.
4 (*Omitted*).		
5 Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	....	Eight annas.
6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1908, or the Code of Civil Procedure, 1908, and not otherwise provided for in this Act		
7. Undertaking under section 49 of the Indian Divorce Act, 1869.		
8. [*Repealed by the Repealing and Amending Act, 1891 (XII of 1891)*]		

Number.		Proper Fee.
9 [*Repealed by Act XII of 1891.*]		
10. Mukhtarnama, Vakalatnama or any paper signed by an Advocate signifying or intimating that he is retained for a party.	When presented for the conduct of any one case—	
	(*a*) to any Civil or Criminal Court other than a High Court or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except those mentioned in clauses (*b*) and (*c*) of this number ;	One rupee.
	(*b*) to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority ;	One rupee eight annas.
	(*c*) to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Three rupees.
11. Memorandum of appeal when the appeal is from an order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908, and is presented.	(*a*) to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority ;	One rupee.
	(*b*) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.	Two rupees.
12. Caveat.	......	Ten rupees.
13. [*Omitted.*]		
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	......	Five rupees.
15. [*Rep. by Act 5 of 1908*].		
16. [*Rep. by Act 6 of 1889*, s. *18*(1)].		
17. Plaint or memorandum of appeal in a suit—		

Number.		Proper Fee.
(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court ; (ii) to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates ;	......	Fifteen rupees
(iii) for relief under section 14 of the Religious Endowments Act, 1863 or under section 91 or section 92 of the Code of Civil Procedure, 1908.	......	Fifty rupees.
17A. Plaint or memorandum of appeal in a suit— (i) to obtain a declaratory decree where no consequential relief is prayed ; (ii) to set aside an award ;	When the plaint is presented to or the memorandum of appeal is against the decree of— a District Munsiff's Court or the City Civil Court	Fifteen rupees.
(iii) to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid.	a District Court or a Sub-Court.	One Hundred rupees if the valuef or purposes of jurdiction is less than ten thousand rupees; five hundred rupees if such value is ten thousand rupees or upwards.

Notes—Suit for declaration by son that debts of insolvent father and sale by Official Receiver for debts are not binding on him is governed by Art. 17 A. (i). A. I. R. 1935 Mad. 66. A suit for declaration that a document registered by Registrar inspite of objection as forged is governed by this article. A. I. R. 1935 Mad. 203.

Number.		Proper Fee.
17-B. Plaint or memorandum of appeal in every suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by this Act.	When the plaint is presented to or the memorandum of appeal is against the decree of—	
	a Revenue Court,	Ten rupees.
	a District Munsiff's Court or the City Civil Court,	Fifteen rupees.
	a District Court or a Sub-Court.	One hundred rupees.

Notes.—Suit to get rate of maintenance awarded under decree reduced is governed by Art. 17 B and not by s 7(ii) nor by s. 7 (ivA). A. I. R. 1935 Mad. 655.

18. Applications under section 17 or section 20 of the Second Schedule of the Code of Civil Procedure, 1908	When presented to a District Munsiff's Court or the City Civil Court.	Fifteen rupees.
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.	When presented to a District Court or a Sub-Court.	One hundred rupees.
20. Every petition under the Indian Divorce Act, 1869, except petitions under section 44 of the same Act and every memorandum of appeal under section 55 of the same Act	... ...	Twenty rupees.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865		

APPENDIX F.

PUNJAB ACT VII OF 1922.

AS AMENDED BY

Punjab Acts I and VI of 1926.

An Act to amend the Court Fees Act, 1870, with reference to the scale of Court-fees in the Punjab.

Preamble.

WHEREAS it is necessary to revise the scale of Court-fees provided in the Court Fees Act, 1870, in its application to the Punjab in the manner hereinafter appearing; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called the Court Fees (Punjab Amendment) Act, 1922.

(2) It extends to the Punjab.

(3) It shall come into force on such date as the Local Government may by notification appoint in this behalf.

Application of Act.

2. (1) The Court Fees Act, 1870, shall be amended in its application to the Punjab in the manner hereinafter provided.

(2) The sections and schedules hereinafter referred to by number mean the sections and schedules respectively so numbered in the Court Fees Act, 1870, unless it shall appear to the contrary.

Amendment of section 4.

3. In section 4 the word "one" shall be substituted for the word "two" between the word "of" and the word "or".

Amendment of section 18.

4. In section 18 between the word "of" and the word "unless" for the words "eight annas" the words "one rupee" shall be substituted.

5. (1) For Article I of Schedule 1 the following Article shall be substituted, namely :—

Number.		Proper Fee.
1. Plaint, written-statement pleading a set-of or counter claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or revenue Court except those mentioned in section 3	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Nine annas.
	When such amount or value exceeds five rupees but does not exceed one hundred rupees, for every five rupees or part thereof, in excess of five rupees up to one hundred rupees.	Nine annas.
	When such amount or value exceeds one hundred rupees, but does not exceed five hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees up to the five hundred rupees.	One rupee two annas.
	When such amount or value exceeds five hundred rupees, for every ten rupees or part thereof, up to one thousand rupees	One rupee two annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof, in excess of one thousand rupees up to five thousand rupees.	Seven rupees eight annas.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof, in excess of five thousand rupees up to ten thousand rupees	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees up to twenty thousand rupees	Twenty two rupees eight annas.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof, in excess of twenty thousand rupees up to thirty thousand rupees.	Thirty rupees.

Number.		Proper Fee.
1. Plaint etc.—*concluded.*	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof, in excess of thirty thousand rupees up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof, in excess of fifty thousand rupees.	*Thirty rupees.*

(2) The proviso as to the maximum, after the ninth entry in the second column of the said article in the same schedule, shall be omitted.

Re-enactment and amendment of Schedule I, Article 13.

6. Article 13 of the Schedule I which was repealed by the Punjab Courts (Amendment) Act, 1912, in so far as it affected the Punjab is hereby re-enacted, save that for the words "Chief Court in the Punjab" the words, "High Court of Judicature at Lahore," for the figures "70" the figures "44" and for the figures "1884" the figures "1918" shall be substituted; and the words and figures "as amended by the Punjab Courts Act, 1899" shall be omitted.

Amentment of table of rates of *ad valorem* fees.

7. For the table of rates of *ad valorem* fees leviable on the institution of suits set forth at the end of Schedule I, the table set forth in the Schedule to this Act shall be substituted.

8. In Article 1 of Schedule II—

Amendment of Schedule I, Article I, clauses (a) and (b).

(1) For the words "one anna" in the third column, opposite clause (a) in the second column, the words "two annas" shall be substituted;

(2) for the words "eight annas" in the third column opposite clause (b) in the second column, the words "one rupee" shall be substituted;

Amendment of Schedule II, Articles 4, 5 and 7.

(3) for clause (d), in the second column and the corresponding entry in the third column shall be substituted, the following clause and entries, namely:—

(d) When presented to the High Court—

(i) Under the Indian Companies Act 1913, for winding up a company.	One hundred rupees.
(ii) Under the same Act for taking some other judicial action.	Five rupees.
(iii) In all other cases.	Two rupees.

Amendment of Schedule II, Articles 4, 5 and 7.

9. In the third column of Articles 4, 5, and 7 respectively of Schedule II—

for the words "eight annas" the words "one rupee" shall be substituted.

Amendment of Schedule II, Article 10, clause (a).

10. In the third column of Article 10 Schedule II—

for the words "eight annas" opposite clause (a) in the second column, the words "one rupee" shall be substituted.

Amendment of Schedule II, Article 11, clauses (a) and (b).

11. In the third column of Article 11 of Schedule II—

(1) for the words "eight annas" opposite clause (a) in the second column, the words "one rupee" shall be substituted ;

(2) for the words "two rupees" opposite clause (b) in the second column the words "four rupees" shall be substituted.

New Article to Schedule II.

12. The following new Article with the corresponding entry in the third column shall be added to the first column, of Schedule II, namely :—

22. Plaint or memorandum of appeal in a suit by a reversioner under the Punjab Customary Law for a declaration in respect of an alienation of ancestral land.	Twenty rupees.

SCHEDULE.

Table of Rates of *advalorem* fees leviable on the institution of suits.

(See section 7)

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.	When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A.	Rs	Rs.	Rs. A.
...	5	0 9	220	230	25 12
5	10	1 2	230	240	27 0
10	15	1 11	240	250	28 2
15	20	2 4	250	260	29 4
20	25	2 13	260	270	30 6
25	30	3 6	270	280	31 8
30	35	3 15	280	290	32 10
35	40	4 8	290	300	33 12
40	45	5 1	300	310	34 14
45	50	5 10	310	320	36 0
50	55	6 3	320	330	37 2
55	60	6 12	330	340	38 4
60	65	7 5	340	350	39 6
65	70	7 14	350	360	40 8
70	75	8 7	360	370	41 10
75	80	9 0	370	380	42 12
80	85	9 9	380	390	43 14
85	90	10 2	390	400	45 0
90	95	10 11	400	410	46 2
95	100	11 4	410	420	47 4
100	110	12 6	420	430	48 6
110	120	13 8	430	440	49 8
120	130	14 10	440	450	50 10
130	140	15 12	450	460	51 12
140	150	16 14	460	470	52 14
150	160	18 0	470	480	54 0
160	170	19 2	480	490	55 2
170	180	20 4	490	500	56 4
180	190	21 6	500	510	57 6
190	200	22 8	510	520	58 8
200	210	23 10	520	530	59 10
210	220	24 12	530	540	60 12

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870)		When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870.)	
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs.	A.
540	550	61	14	1,900	2,000	187	8
550	560	63	0	2,000	2,100	195	0
560	570	64	2	2,100	2,200	202	8
570	580	65	4	2,200	2,300	210	0
580	590	66	6	2,300	2,400	217	8
590	600	67	8	2,400	2,500	225	0
600	610	68	10	2,500	2,600	232	8
610	620	69	12	2,600	2,700	240	0
620	630	70	14	2,700	2,800	247	8
630	640	72	0	2,800	2,900	255	0
640	650	73	2	2,900	3,000	262	8
650	660	74	4	3,000	3,100	270	0
660	670	75	6	3,100	3,200	277	8
670	680	76	8	3,200	3,300	285	0
680	690	77	10	3,300	3,400	292	8
690	700	78	12	3,400	3,500	300	0
700	710	79	14	3,500	3,600	307	8
710	720	81	0	3,600	3,700	315	0
720	730	82	2	3,700	3,800	322	8
730	740	83	4	3,800	3,900	330	0
740	750	84	6	3,900	4,000	337	8
750	760	85	8	4,000	4,100	345	0
760	770	86	10	4,100	4,200	352	8
770	780	87	12	4,200	4,300	360	0
780	790	88	14	4,300	4,400	367	8
790	800	90	0	4,400	4,500	375	0
800	810	91	2	4,500	4,600	382	8
810	820	92	4	4,600	4,700	390	0
820	830	93	6	4,700	4,800	397	8
830	840	94	8	4,800	4,900	405	0
840	850	95	10	4,900	5,000	412	8
850	860	96	12	5,000	5,250	427	8
860	870	97	14	5,250	5,500	442	8
870	880	99	0	5,500	5,750	457	8
880	890	100	2	5,750	6,000	472	8
890	900	101	4	6,000	6,250	487	8
900	910	102	6	6,250	6,500	502	8
910	920	103	8	6,500	6,750	517	8
920	930	104	10	6,750	7,000	532	8
930	940	105	12	7,000	7,250	547	8
940	950	106	14	7,250	7,500	562	8
950	960	108	0	7,500	7,750	577	8
960	970	109	2	7,750	8 000	592	8
970	980	110	4	8,000	8 250	607	8
980	990	111	6	8,250	8,500	622	8
990	1,000	112	8	8,500	8,750	637	8
1,000	1,100	120	0	8,750	9 000	652	8
1,100	1,200	127	8	9,000	9,250	667	8
1,200	1,300	135	0	9,250	9,500	682	8
1,300	1,400	142	8	9,500	9,750	697	8
1,400	1,500	150	0	9,750	10,000	712	8
1,500	1,600	157	8	10 000	10,500	735	0
1,600	1,700	165	0	10,500	11,000	757	8
1,700	1,800	172	8	11,000	11,500	780	0
1,800	1,900	180	0	11,500	12,000	802	8

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870)		When the amount or value of the subject matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870).	
Rs.	Rs.	Rs	A.	Rs.	Rs.	Rs.	A.
12,000	12,500	825	0	1,35,000	1,40,000	2,302	8
12,500	13,000	847	8	1,40,000	1,45,000	2,332	8
13,000	13,500	870	0	1,45,000	1,50,000	2,362	8
13,500	14,000	892	8	1,50,000	1,55,000	2,392	8
14,000	14,500	915	0	1,55,000	1,60,000	2,422	8
14,500	15,000	937	8	1,60,000	1,65,000	2,452	8
15,000	15,500	960	0	1,65,000	1,70,000	2,482	8
15,500	16,000	982	8	1,70,000	1,75,000	2,512	8
16,000	16,500	1,005	0	1,75,000	1,80,000	2,542	8
16,500	17,000	1,025	8	1,80,000	1,85,000	2,572	8
17,000	17,500	1,050	0	1,85,000	1,90,000	2,602	8
17,500	18,000	1,072	8	1,90,000	1,95,000	2,632	8
18,000	18,500	1,095	0	1,95,000	2,00,000	2,662	8
18,500	19,000	1,117	8	2,00,000	2,05,000	2,692	8
19,000	19,500	1,140	0	2,05,000	2,10,000	2,722	8
19,500	20,000	1,162	8	2,10,000	2,15,000	2,752	8
20,000	21,000	1,192	8	2,15,000	2,20,000	2,782	8
21,000	22,000	1,222	8	2,20,000	2,25,000	2,812	8
22,000	23,000	1,252	8	2,25,000	2,30,000	2,842	8
23,000	24,000	1,282	8	2,30,000	2,35,000	2,872	8
24,000	25,000	1,312	8	2,35,000	2,40,000	2,902	8
25,000	26,000	1,342	8	2,40,000	2,45,000	2,932	8
26,000	27,000	1,372	8	2,45,000	2,50,000	2,962	8
27,000	28,000	1,402	8	2,50,000	2,55,000	2,992	8
28,000	29,000	1,432	8	2,55,500	2,60,000	3,022	8
29,000	30,000	1,462	8	2,60,000	2,65,000	3,052	8
30,000	32,000	1,492	8	2,65,000	2,70,000	3,082	8
32,000	34,000	1,522	8	2,70,000	2,75,000	3,112	8
34,000	36,000	1,552	8	2,75,000	2,80,000	3,142	8
36,000	38,000	1,582	8	2,80,000	2,85,000	3,172	8
38,000	40,000	1,612	8	2,85,000	2,90,000	3,202	8
40,000	4,2000	1,642	8	2,90,000	2,95,000	3,232	8
42,000	44,000	1,672	8	2,95,000	3,00,000	3,262	8
44,000	46,000	1,702	8	3,00,000	3,05,000	3,292	8
46,000	48,000	1,732	8	3,05,000	3,10,000	3,322	8
48,000	50,000	1,762	8	3,10,000	3,15,000	3,352	8
50,000	55,000	1,792	8	3,15,000	3,20,000	3,382	8
55,000	60,000	1,822	8	3,20,000	3,25,000	3,412	8
60,000	65,000	1,852	8	3,25,000	3,30,000	3,442	8
65,000	70,000	1,882	8	3,30,000	3,35,000	3,472	8
70,000	75,000	1,912	8	3,35,000	3,40,000	3,502	8
75,000	80,000	1,942	8	3,40,000	3,45,000	3,532	8
80,000	85,000	1,972	8	3,45,000	3,50,000	3,562	8
85,000	90,000	2,002	8	3,50,000	3,55,000	3,592	8
90,000	95,000	2,032	8	3,55,000	3,60,000	3,622	8
95,000	1,00,000	2,062	8	3,60,000	3,65,000	3,652	8
1,00,000	1,05,000	2,092	8	3,65,000	3,70,000	3,682	8
1,05,000	1,10,000	2,122	8	3,70,000	3,75,000	3,712	8
1,10,000	1,15,000	2,152	8	3,75,000	3,80,000	3,742	8
1,15,000	1,20,000	2,182	8	3,80,000	3,85,000	3,772	8
1,20,000	1,25,000	2,212	8	3,85,000	3,90,000	3,802	8
1,25,000	1,30,000	2,242	8	3,90,000	3,95,000	3,832	3
1,30,000	1,35,000	2,272	8	3,95,000	4,00,000	3,862	8

And when the amount or value of the subject-matter exceeds Rs 48,00,000 the proper fee leviable shall be Rs. 3,052 annas 8 plus Rs 30 for each five thousand rupees or part thereof, in excess of Rs. 4,00,000.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870)	When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870)
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
540	550	61 14	1,900	2,000	187 8
550	560	63 0	2,000	2,100	195 0
560	570	64 2	2,100	2,200	202 8
570	580	65 4	2,200	2,300	210 0
580	590	66 6	2,300	2,400	217 8
590	600	67 8	2,400	2,500	225 0
600	610	68 10	2,500	2,600	232 8
610	620	69 12	2,600	2,700	240 0
620	630	70 14	2,700	2,800	247 8
630	640	72 0	2,800	2,900	255 0
640	650	73 2	2,900	3,000	262 8
650	660	74 4	3,000	3,100	270 0
660	670	75 6	3,100	3,200	277 8
670	680	76 8	3,200	3,300	285 0
680	690	77 10	3,300	3,400	292 8
690	700	78 12	3,400	3,500	300 0
700	710	79 14	3,500	3,600	307 8
710	720	81 0	3,600	3,700	315 0
720	730	82 2	3,700	3,800	322 8
730	740	83 4	3,800	3,900	330 0
740	750	84 6	3,900	4,000	337 8
750	760	85 8	4,000	4,100	345 0
760	770	86 10	4,100	4,200	352 8
770	780	87 12	4,200	4,300	360 0
780	790	88 14	4,300	4,400	367 8
790	800	90 0	4,400	4,500	375 0
800	810	91 2	4,500	4,600	382 8
810	820	92 4	4,600	4,700	390 0
820	830	93 6	4,700	4,800	397 8
830	840	94 8	4,800	4,900	405 0
840	850	95 10	4,900	5,000	412 8
850	860	96 12	5,000	5,250	427 8
860	870	97 14	5,250	5,500	442 8
870	880	99 0	5,500	5,750	457 8
880	890	100 2	5,750	6,000	472 8
890	900	101 4	6,000	6,250	487 8
900	910	102 6	6,250	6,500	502 8
910	920	103 8	6,500	6,750	517 8
920	930	104 10	6,750	7,000	532 8
930	940	105 12	7,000	7,250	547 8
940	950	106 14	7,250	7,500	562 8
950	960	108 0	7,500	7,750	577 8
960	970	109 2	7,750	8,000	592 8
970	980	110 4	8,000	8,250	607 8
980	990	111 6	8,250	8,500	622 8
990	1,000	112 8	8,500	8,750	637 8
1,000	1,100	120 0	8,750	9,000	652 8
1,100	1,200	127 8	9,000	9,250	667 8
1,200	1,300	135 0	9,250	9,500	682 8
1,300	1,400	142 8	9,500	9,750	697 8
1,400	1,500	150 0	9,750	10,000	712 8
1,500	1,600	157 8	10,000	10,500	735 0
1,600	1,700	165 0	10,500	11,000	757 8
1,700	1,800	172 8	11,000	11,500	780 0
1,800	1,900	180 0	11,500	12,000	802 8

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee (Act VII of 1870)		When the amount or value of the subject matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870).	
Rs.	Rs.	Rs	A.	Rs.	Rs.	Rs	A.
12,000	12,500	825	0	1,35,000	1,40,000	2,302	8
12,500	13,000	847	8	1,40,000	1,45,000	2,332	8
13,000	13,500	870	0	1,45,000	1,50,000	2,362	8
13,500	14,000	892	8	1,50,000	1,55,000	2,392	8
14,000	14,500	915	0	1,55,000	1,60,000	2,422	8
14,500	15,000	937	8	1,60,000	1,65,000	2,452	8
15,000	15,500	960	0	1,65,000	1,70,000	2,482	8
15,500	16,000	982	8	1,70,000	1,75,000	2,512	8
16,000	16,500	1,005	0	1,75,000	1,80,000	2,542	8
16,500	17,000	1,025	8	1,80,000	1,85,000	2,572	8
17,000	17,500	1,050	0	1,85,000	1,90,000	2,602	8
17,500	18,000	1,072	8	1,90,000	1,95,000	2,632	8
18,000	18,500	1,095	0	1,95,000	2,00,000	2,662	8
18,500	19,000	1,117	8	2,00,000	2,05,000	2,692	8
19,000	19,500	1,140	0	2,05,000	2,10,000	2,722	8
19,500	20,000	1,162	8	2,10,000	2,15,000	2,752	8
20,000	21,000	1,192	8	2,15,000	2,20,000	2,782	8
21,000	22,000	1,222	8	2,20,000	2,25,000	2,812	8
22,000	23,000	1,252	8	2,25,000	2,30,000	2,842	8
23,000	24,000	1,282	8	2,30,000	2,35,000	2,872	8
24,000	25,000	1,312	8	2,35,000	2,40,000	2,902	8
25,000	26,000	1,342	8	2,40,000	2,45,000	2,932	8
26,000	27,000	1,372	8	2,45,000	2,50,000	2,962	8
27,000	28,000	1,402	8	2,50,000	2,55,000	2,992	8
28,000	29,000	1,432	8	2,55,500	2,60,000	3,022	8
29,000	30,000	1,462	8	2,60,000	2,65,000	3,052	8
30,000	32,000	1,492	8	2,65,000	2,70,000	3,082	8
32,000	34,000	1,522	8	2,70,000	2,75,000	3,112	8
34,000	36,000	1,552	8	2,75,000	2,80,000	3,142	8
36,000	38,000	1,582	8	2,80,000	2,85,000	3,172	8
38,000	40,000	1,612	8	2,85,000	2,90,000	3,202	8
40,000	4,2000	1,642	8	2,90,000	2,95,000	3,232	8
42,000	41,000	1,672	8	2,95,000	3,00,000	3,262	8
44,000	46,000	1,702	8	3,00,000	3,05,000	3,292	8
46,000	48,000	1,732	8	3,05,000	3,10,000	3,322	8
48,000	50,000	1,762	8	3,10,000	3,15,000	3,352	8
50,000	55,000	1,792	8	3,15,000	3,20,000	3,382	8
55,000	60,000	1,822	8	3,20,000	3,25,000	3,412	8
60,000	65,000	1,852	8	3,25,000	3,30,000	3,442	8
65,000	70,000	1,882	8	3,30,000	3,35,000	3,472	8
70,000	75,000	1,912	8	3,35,000	3,40,000	3,502	8
75,000	80,000	1,942	8	3,40,000	3,45,000	3,532	8
80,000	85,000	1,972	8	3,45,000	3,50,000	3,562	8
85,000	90,000	2,002	8	3,50,000	3,55,000	3,592	8
90,000	95,000	2,032	8	3,55,000	3,60,000	3,622	8
95,000	1,00,000	2,062	8	3,60,000	3,65,000	3,652	8
1,00,000	1,05,000	2,092	8	3,65,000	3,70,000	3,682	8
1,05,000	1,10,000	2,122	8	3,70,000	3,75,000	3,712	8
1,10,000	1,15,000	2,152	8	3,75,000	3,80,000	3,742	8
1,15,000	1,20,000	2,182	8	3,80,000	3,85,000	3,772	8
1,20,000	1,25,000	2,212	8	3,85,000	3,90,000	3,802	8
1,25,000	1,30,000	2,242	8	3,90,000	3,95,000	3,832	3
1,30,000	1,35,000	2,272	8	3,95,000	4,00,000	3,862	8

And when the amount or value of the subject-matter exceeds Rs. 48,00,000, the proper fee leviable shall be Rs. 3,062 annas 8 plus Rs. 30 *for each five* thousand rupees or part thereof, in excess of Rs. 4,00,000.

APPENDIX G.

UNITED PROVINCES ACT NO. III OF 1932.

THE UNITED PROVINCES COURT FEES (AMENDMENT) ACT, 1932.

[PASSED BY THE LOCAL LEGISLATURE OF THE UNITED PROVINCES OF AGRA AND OUDH.]

Received the assent of the Governor of the United Provinces of Agra and Oudh on April 14, 1932, and of the Governor-General on April 25, 1932, and was published under section 81 of the Government of India Act on May 7, 1932.

An Act further to amend the Court Fees Act, 1870, in its application to the United Provinces.

Preamble.

WHEREAS it is expedient further to amend the Court Fees Act, 1870,* in its application to the United Provinces.

AND WHEREAS the previous sanction of the Governor General has been obtained, under section 80-A, sub-section (3), of the Government of India Act, † to the passing of this Act ; It is hereby enacted as follows :—

Title, extent and commencement.

1. (1) This Act may be called the United Provinces Court Fees (Amendment) Act, 1932.

(2) It extends to the territories for the time being administered by the Local Government of the United Provinces.

(3) It shall come into force on the first day of May, 1932, and shall remain in force up till March 31, 1936.

Amendment of section 6 of Act VII of 1870

2. To section 6 of the Court Fees Act, 1870, hereinafter referred to as "the said Act", the following proviso shall be added, namely :—

[illegible] any suit, appeal or other pro- [illegible] gra Tenancy Act, 1926,§ or the [illegible] Land Revenue Act, 1901, ‖ the proper fee shall be three-quarters of the fee indicated in either of the said schedules except where the document is of any of the kinds specified as chargeable in the first schedule and the amount or value of the subject-matter of the suit, appeal or proceeding to which it relates exceeds the value of Rs 500 :

Provided further that the fee payable in respect of any such document as is mentioned in the foregoing proviso shall not be less than that indicated by either of the said schedules before the commencement of this Act.

Amendment of a paragraph (v) of section 7 of Act VII of 1870.

3. In paragraph (v) of section 7 of the said Act the word "ten" in clause (a) shall be read as "twenty" and the word "five" in clause (b) shall be read as "six".

* VII of 1870.

† 5 and 6, Geo. V. c. 61 ; 6 and 7 Geo V. c. 37 ; 9 and 10, Geo V. c. 101.

‡ XXII of 1886.

§ U. P. Act III of 1926.

‖ U. P. Act III of 1901.

Amendment of paragraph (ix) of section 7 of Act VII of 1870.

4. For paragraph (ix) of section 7 of the said Act the following clause shall be substituted, namely :—

(IX) In suits against a mortgagee for the recovery of the property mortgaged according to the principal money expressed to be secured by the instrument of mortgage.

(IX) (*a*) In suits by a mortgagee to foreclose the mortgage, or where the mortgage *is made by conditional sale, to have the sale declared absolute*, according to the total amount claimed by way of principal and interest.

Amendment of section 18 of Act VII of 1870.

5 In section 18 of the said Act for the words "eight annas" the words "twelve annas" shall be substituted

Amendment of Schedule I to Act VII of 1870.

6. In Schedule I to the said Act the following amendments shall be made, namely :—

(i) In article 1 for the entries in the second and third columns the entries shown in the first and second columns of Schedule A to this Act shall be substituted.

(ii) In article 6 for the words "four," "eight" and "one rupee" in the third column the word "six," "twelve" and "one rupee eight annas," respectively, shall be substituted

(iii) In article 7 for the words "eight" and "one rupee" in the third column the words "twelve" and "one rupee eight annas," respectively, shall be substituted.

(iv) In article 8 for the word "eight" in the third column the word "twelve" shall be substituted.

(v) In article 11 for the entries above the proviso in the second and third columns the following shall be substituted :—

1. When the amount or value of the property in respect of which the grant of Probate or Letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees and	Two per centum on such amount or value.
2. When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees ; and	Two and one-half per centum on such amount or value.
3. When such amount or value exceeds fifty thousand rupees, but does not exceed one lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees ; and	Three percentum on such amount or value.
4. When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees."	Four percentum on such amount or value.

(vi) In article 12 for the entries in the first and second columns and for the first paragraph in the third column the following shall be substituted :—

"12. Certificate under the Indian Succession Act. 1925.	1. When the amount or value of any debt or security specified in the certi-	Two per centum on such amount or value and three per centum on the

ficate under section 374 of the Act does not exceed twenty thousand rupees ;	amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
and	
2. When such amount or value exceeds twenty thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of twenty thousand rupees ;	Two and a-half per centum on such amount or value and three and a three-quarters per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
and	
3. When such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees ;	Three per centum on such amount or value and four and a-half per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
and	
4. When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees.	Four per centum on such amount or value and six per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.

(vii) For the table of *advalorem* fees leviable on the institution of suits the table shown in Schedule B to this Act shall be substituted.

Amendment of Schedule II to Act VII of 1870.

7. In Schedule II to the said Act the following amendments shall be made, namely :—

(i) In article I for the words "one anna", "eight annas" and "one rupee" in the third column the words "two annas", "twelve annas" and "one rupee and eight annas," respectively, shall be substituted ; and the following clause shall be substituted for clause (*d*) :—

(d) I. When presented to the Board of Revenue for revision of a judgment or order.	Three rupees.
II. When presented to a High Court—	
(1) Under the Indian Companies Act, 1913 (Act VII of 1913), for winding up a Company	Fifty rupees.
(2) Under section 115 of the Code of Civil Procedure, 1908 (Act V of 1908) for revision of an order—	Four rupees.
(3) In any other case	Three rupees.

(*ii*) In the article I-A for the words "twelve annas", in the third column the words "one rupee two annas" shall be substituted.

(*iii*) In article 5, 6 and 7 for the word "eight" in the third column the word "twelve" shall be substituted.

(*iv*) In article 10 for the words "eight annas", "one rupee" and "two rupees" in the third column, the words "twelve annas", "one rupee and eight annas" and "three rupees", respectively, shall be substituted.

(V) For article 11, the following shall be substituted :—

11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented.	(a) to any Civil Court other than a High Court or to any revenue Court or Executive officer other than a Commissioner of the division or Chief Controlling Revenue or Executive Authority.	Twelve annas.
	(b) to a Commissioner of the division .	Two rupees.
	(c) to a High Court or to a Chief Controlling Executive or Revenue Authority ;	Three rupees,

(VI) The bracket opposite articles 12, 13 and 14 in the second column shall be omitted and for article 12 the following shall be substituted .—

12. Caveat ...	Where the amount or value of the property in respect of which the caveat is lodged— (a) does not exceed five thousand rupees ;	Five rupees
	(b) exceeds five thousand rupees	Ten rupees.

(VII) For article 14 the following shall be substituted, namely :—

14. Petition in a suit under the Native Convert's Marriage Dissolution Act, 1866.		Seven rupees eight annas

(VIII) In article 17 for the words "Ten rupees" in the third column, the words "Fifteen rupees" shall be substituted, and the following proviso shall be added :—

Provided that in a suit filed before a High Court under its original jurisdiction the fee chargeable under this article shall be one hundred rupees.

(IX) In articles 18 and 19 for the word "ten" in the third column the word "fifteen" shall be substituted

(X) In articles 20 and 22 for the word "twenty" in the third column the word "thirty" shall be substituted.

SCHEDULE A.

When the amount or value of the subject matter in dispute does not exceed five rupees	Six annas.
When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees	Six annas.
When such amount or value exceeds one hundred rupees for every ten rupees, or part thereof, in excess of one hundred rupees up to two hundred rupees	Twelve annas.
When such amount or value exceeds two hundred rupees for every ten rupees or part thereof, in excess of two hundred rupees up to five hundred rupees	One rupee

When such amount or value exceeds five hundred rupees for every ten rupees, or part thereof, in excess of five hundred rupees up to one thousand rupees.	One rupee four annas.
When such amount or value exceeds one thousand rupees for every one hundred rupees or part thereof, in excess of one thousand rupees up to five thousand rupees.	Six rupees four annas.
When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof, in excess of five thousand rupees up to ten thousand rupees.	Twelve rupees eight annas.
When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees	Eighteen rupees twelve annas.
When such amount or value exceeds twenty thousand rupees for every one thousand rupees or part thereof in excess of twenty thousand rupees up to thirty thousand rupees.	Twenty-five rupees.
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excees of thirty thousand rupees up to fifty thousand rupees.	Twenty-five rupees.
When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees :	Thirty-one rupees four annas.

Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be four thousand five hundred rupees.

SCHEDULE B.

Table of rates of advalorem *fees leviable on the institutian of suits.*

When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee.	When the amount or value of the subject-matter exceed	But does not exceeds.	Proper Fee
Rs.	Rs.	Rs. As	Rs.	Rs.	Rs As.
...	5	0 6	75	80	6 0
5	10	0 12	80	85	6 6
10	15	1 2	85	90	6 12
15	20	1 8	90	95	7 2
20	25	1 14	95	100	7 8
25	30	2 4	100	110	8 4
30	35	2 10	110	120	9 0
35	40	3 0	120	130	9 12
40	45	3 6	130	140	10 8
45	50	3 12	140	150	11 4
50	55	4 2	150	160	12 0
55	60	4 8	160	170	12 12
60	65	4 14	170	180	13 8
65	70	5 4	180	190	14 4
70	75	5 10	190	200	15 4

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper Fee		When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee.	
Rs.	Rs.	Rs.	A.	Rs	Rs.	Rs.	A
200	210	16	0	750	760	77	8
210	220	17	0	760	770	78	12
220	230	18	0	770	780	80	0
230	240	19	0	780	790	81	4
240	250	20	0	790	800	82	8
250	260	21	0	800	810	83	12
260	270	22	0	810	820	85	0
270	280	23	0	820	830	86	4
280	290	24	0	830	840	87	8
290	300	25	0	840	850	88	12
300	310	26	0	850	860	90	0
310	320	27	0	860	870	91	4
320	330	28	0	870	880	92	8
330	340	29	0	880	890	93	12
340	350	30	0	890	900	95	0
350	360	31	0	900	910	96	4
360	370	32	0	910	920	97	8
370	380	33	0	920	930	98	12
380	390	34	0	930	940	100	0
390	400	35	0	940	950	101	4
400	410	36	0	950	960	102	8
410	420	37	0	960	970	103	12
420	430	38	0	970	980	105	0
430	440	39	0	980	990	106	4
440	450	40	0	990	1,000	107	8
450	460	41	0	1,000	1,100	113	12
460	470	42	0	1,100	1 200	120	0
470	480	43	0	1,200	1,300	126	4
480	490	44	0	1,300	1,400	132	8
490	500	45	0	1,400	1,500	138	12
500	510	46	4	1,500	1,600	145	0
510	520	47	8	1,600	1,700	151	4
520	530	48	12	1,700	1,800	157	8
530	540	50	0	1,800	1,900	163	12
540	550	51	4	1,900	2,000	170	0
550	560	52	8	2,000	2,100	176	4
560	570	53	12	2,100	2,200	182	8
570	580	55	0	2,200	2 300	188	12
580	590	56	4	2,300	2,400	195	0
590	600	57	8	2,400	2 500	201	4
600	610	58	12	2,500	2,600	207	8
610	620	60	0	2 600	2,700	213	12
620	630	61	4	2,700	2,800	220	0
630	640	62	8	2,800	2,900	226	4
640	650	63	12	2,900	3 000	232	8
650	660	65	0	3,000	3,100	238	12
660	670	66	4	3,100	3,200	245	0
670	680	67	8	3,200	3,300	251	4
980	690	68	12	3,300	3,400	257	8
690	700	70	0	3,400	3 500	263	12
700	710	71	4	3,500	3,600	270	0
710	720	72	8	3,600	3,700	276	4
720	730	73	12	3,700	3,800	282	8
730	740	75	0	3,800	3,900	288	12
740	750	76	4	3 900	4,000	295	0

When the amount or value of the subject-matter, exceeds.	But does not exceed.	Proper Fee.		When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.	
Rs. A.	Rs. A.	Rs.	A.	Rs.	Rs.	Rs.	A.
4,000	4,100	301	4	15,000	15,500	813	12
4,100	4,200	307	8	15,500	16,000	832	8
4,200	4,300	313	12	16,000	16,500	851	3
4,300	4,400	320	0	16,500	17,000	870	0
4,400	4,500	326	4	17,000	17,500	888	12
4,500	4,600	332	8	17,500	18,000	907	8
4,600	4,700	338	12	18,000	18,500	926	4
4,700	4,800	345	10	18,500	19,000	945	0
4,800	4,900	351	4	19,000	19,500	963	12
4,900	5,000	357	8	19,500	20,000	982	8
5,000	5,250	370	0	20,000	21,000	1,007	8
5,250	5,500	382	8	21,000	22,000	1,032	8
5,500	5,750	395	0	22,000	23,000	1,057	8
5,750	6,000	407	8	23,000	24,000	1,082	8
6,000	6,250	420	0	24,000	25,000	1,107	8
6,250	6,500	432	8	25,000	26,000	1,132	8
6,500	6,750	445	0	26,000	27,000	1,157	8
6,750	7,000	457	8	27,000	28,000	1,182	8
7,000	7,250	470	0	28,000	29,000	1,207	8
7,250	7,500	482	8	29,000	30,000	1,232	8
7,500	7,750	495	0	30,000	32,000	1,257	8
7,750	8,000	507	8	32,000	34,000	1,282	8
8,000	8,250	520	0	34,000	36,000	1,307	8
8,250	8,500	532	8	36,000	38,000	1,332	8
8,500	8,750	545	0	38,000	40,000	1,357	8
8,750	9,000	557	8	40,000	42,000	1,382	8
9,000	9,250	570	0	42,000	44,000	1,407	8
9,250	9,500	582	8	44,000	46,000	1,432	8
9,500	9,750	595	0	46,000	48,000	1,457	8
9,750	10,000	607	8	48,000	50,000	1,482	8
10,000	10,500	626	4	50,000	55,000	1,513	12
10,500	11,000	645	0	55,000	60,000	1,545	0
11,000	11,500	663	12	60,000	65,000	1,576	4
11,500	12,000	682	6	65,000	70,000	1,607	8
12,000	12,500	701	4	70,000	75,000	1,638	12
12,500	13,000	720	0	75,000	80,000	1,670	0
13,000	13,500	738	12	80,000	85,000	1,701	4
13,500	14,000	757	8	85,000	90,000	1,732	8
14,000	14,500	776	4	90,000	95,000	1,763	12
14,500	15,000	795	0	95,000	100,000	1,795	0

And the fee increases at the rate of thirty-one rupees four annas for every five thousand rupees, or part thereof, for example—

Rs.	Rs.	
2,00,000	2,420	0
3,00,000	3,045	0
4,00,000	3,670	0
5,00,000	4,295	0
5,35,000	4,500	0

U. P. COURT FEES (AMENDMENT) ACT III OF 1933.

PASSED BY THE LOCAL LEGISLATURE OF THE UNITED PROVINCES OF AGRA AND OUDH.

An Act to amend the Court Fees Act, 1870, in its application to the United Provinces.

WHEREAS it is expedient to amend the Court Fees Act, 1870, in its application to the United Provinces for the purposes hereinafter appearing; It is hereby enacted as follows :—

Preamble.

Title.

1. (1) This Act may be called the United Provinces Court Fees (Amendment) Act, 1933.

(2) It extends to the territories for the time being administered by the Local Government of the United Provinces.

Addition of new article to Schedule II to Act VII of 1870.

2. In schedule II to the Court Fees Act, 1870, the following article shall be added after article 21.

Number.			Proper Fee.
22.	Election petition	(a) A petition presented to the Commissioner of a division or to the Collector of a district (or to some other person or tribunal specially appointed by rule in this behalf) under sub-section (2) of section 22 of the United Provinces Municipalities Act (Act II of 1916) questioning the election of any person as a member of the Municipal Board.	One hundred rupees.
		(b) A petition presented to a District Judge (or to some other person or tribunal specially appointed by rule in this behalf) or to a munsif, under sub-section (2) of section 18 of the District Boards Act (Act X of 1922) questioning the election of any person as a member of a District Board.	Do.

THE CROWN GRANTS ACT, 1895.

Act No. XV OF 1895.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor-General on the 10th October, 1895.*)

An Act to explain the Transfer of Property Act, 1882, *so far as relates to grants from the Crown, and to remove certain doubts as to the powers of the Crown in relation to such grants.*

Preamble

WHEREAS doubts have arisen as to the extent and operation of the Transfer of Property Act, 1882, and as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, and it is expedient to remove such doubts; It is hereby enacted as follows :—

Notes.—Act is not an enacting or enabling measure but is an explanatory or declaratory Act and refers only to grants subsequent to 1882. A. I. R. 1926 Mad. 706=49 M. 349=50 M. L. J. 699=96 Ind. Cas. 897.

Title and extent.

1. (1) This Act may be called the Crown Grants Act, 1895;

(2) It extends to the whole of British India;*

Legislative Papers.—For Statement of Objects and Reasons, *vide the Gazette of India* 1895, Pt. V, p. 196 and for Proceedings in Council, *vide ibid* Pt. VI, pp. 339 and 355.

Notes.—In England it is said no one holds market without a license from the Crown and the reason has been thus stated: "The reason why a market or fair cannot be holden without a grant is not merely for the sake of promoting traffic of commerce but also, for the like reason as in the Roman law, for the preservation of order and prevention of irregular behaviour; *ubiest multitudo, ubidebit esset rector*." The words are those of *Mr. Justice Wilmot* in *Rex* v. *Marsden*, (1765) 3 Burr. 1812 and they were cited in the House of Lords in the case of *Hammerton* v. *Earl of Dysart*, L. R. (1916) 1 A. C. 67 at p. 68. In Bengal the right to hold market is treated as incident of ownership of land. A proprietor may set up a market in proximity to his neighbour's market without infringing the maxim. *Sic utere, tou at alie num non lacadas.* The proprietor of the old market has no monopoly or privilege which is entitled to protection and no immunity from competition (*Hammerton* v. *Earl of*

ts are diminished." 24

ade by the Crown, even

Hindu Law. 2 C. L. J.

194 (P. C.)=9 C. W. N, 1009=8 O. C. 317=15 M L. J 352=27 C. 634. This Act is applicable to grants made under Government of India Act, s. 1. 128 Ind. Cas. 721. T. P. Act does not apply to leases by Crown. 104. Ind. Cas. 209. This is also a declaratory Act. 49 M. 349.

Transfer of Property Act, 1882, not to apply to Crown grants.

2. Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein, heretofore made or hereafter to be made by or on behalf of Her Majesty the Queen-Empress, her heirs, or successors, or by or on behalf of the Secretary of State for India in Council to, or in favour of, any person whomsoever, but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

[illegible] alienations should not be the subject of a sale at the suit of a mortgagee. 3 A. L. J. 628=A. W N. 1906 255. The civil Court has jurisdiction to determine whether a grant of land alleged to have been made by an officer on behalf of the Crown is binding on the Crown or persons claiming under it subsequent to the grant and the mere fact that the alleged grant purports to have been made under the *darkhast* rule does not affect that jurisdiction [illegible] see also 29 M. 461; 38 M. 99;

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irrespective of the provisions of the Transfer of Property Act. A. W. N. (1906) 44=3 A. L. J. 129. The provisions of sections 2 and 3 of the Crown Grants Act do not exclude all leases executed by or on behalf of Government from the operation of section 107 of the Transfer of Property Act, *a fortiori* they do not exclude the operation of the Indian Registration Act which itself provides for the cases in which documents are exempted from registration when executed by or on behalf of Government 2 Ind. Cas. 933=36 A. 176=12 A. L. J. 125. Provisions of Transfer of Property Act do not apply to Crown grants and a deed of sale of Crown land has to be registered. A. I. R. 1931 Pat. 268=13 P. L. T. 189=10 Pat. 203. The expression "grant" in this section is not restricted to the transfer of prerogative right possessed

* Certain word after this repealed by Act 10 of 1914 has been omitted.

by the Crown but denotes transfers of land of every description 53 Ind. Cas. 345=43 M. 65=37 M. L. J. 332 Leases granted by the Crown are outside the operation of the Transfer of Property Act There is no distinction between grants by virtue

a mercantile transaction

of this Act in cases where

927 Oudh 131

3. All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contraay notwithstanding.

Crown grants to take effect according to their tenor.

Notes.—A grant by the Crown for the maintenance of a tomb cannot be contended to be invalid on the ground that it created an estate not recognised by the Mahomedan Law, as the Crown has under this section power to make any such grant or transfer, "any rule of law statute or enactment of the legislature to the contrary notwithstanding." 2 M. L T 55 A stipulation, in a lease granted by Government of land situate in Malabar, that the lessee should not erect buildings thereon does not fall within the mischief of section 10 of the Malabar Compensation for Tenants Improvements Act and is saved by this section. 53 Ind Cas 345=43 M.

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volition, actual or presumed, to impose upon lands or other property any limitation or descent which is at variance with the ordinary law of descent of property applicable to the case. 23 C. W N 101=40 A 470=45 I. A 134=48 Ind Cas 213 (P. C). Where Crown grant contains a reservation of the right to terminate the tenancy on six month's notice and also an express covenant by the lessee to surrender, the tenant, on ejectment, is not entitled to compensation under the Malabar Compensation for Tenant's Improvements Act. 69 Ind Cas. 475=41 M. L J. 404. The Act cannot be taken to mean that when the Crown has granted an estate upon certain terms, then those terms are to hold good in perpetuity, and that the Crown is precluded from modifying those terms by subsequent legislation 1927 Oudh 280. This Act does not apply to lease of roadside *poram boke* belonging to District Local Board. A. I. R. 1930 Mad 16=57 M. L J. 673=53 M. 54=120 Ind Cas 561. Covenant in grant restraining alienation is not void A I R. 1926 Mad 706=49 M. 346=50 M. L. J. 699=96 Ind Cas 1011. Where estate was forfeited in 1856 and was granted under a *sanad* custom as to succession before 1856 can not be set up contrary to rule of succession in *sanad* A I R. 1922 P. C 289=44 A 449=9 O. L. J 428=49 I. A. 276=27 C. W. N. 129=44 M L. J 337=25 O C 313=68 Ind. Cas. 1000 (P.C.) Terms of *Sanad* cannot be revived after legislative modification. A. I. R. 1927 Oudh 278=104 Ind. Cas 299. Mere name of vendee is not 'provision" within this section. *A. I. R. 1933 Oudh 134 (F. B)=8 Luck. 322=10 O W N 113*=142 Ind. Cas. 566.

THE CUTCHI MEMONS ACT, 1920.

ACT NO. XLVI OF 1920.

PASSED BY THE GOVERNOR GENERAL IN COUNCIL.

Received the assent of the Governor-General on the 17th September 1920.

An Act to enable Cutchi Memons to be governed in matters of succession and inheritance by the Mahommadan Law.

WHEREAS it is expedient to enable those Cutchi Memons who so desire to be governed in matters of succession and inheritance by the Muhammadan law ; It is hereby enacted as follows :—

Preamble.

Notes—Before the passing of this Act all the Cutchi Memons were governed by Hindu Law in matters of succession. 41 B 181=17 Bom L R 799=31 Ind Cas. 196 ; 43 IA. 35=20 C W. N 562=30 M. L J 227 ; 5 Ind. Cas 990=30 P. R. (1910)=27 P. W. R. (1910); 10 B. 1=30 B 497=7 Bom. L. R. 447 ;

9 B. 115. But the Cutchi Memons are not Hindus. 6 B. 452. Although Cutchi Memons are governed by the Hindu law and customs as regards succession, still in other matters such as execution of Will etc. they are governed by the Muhammadan law. 7 Bom. L R. 558; 251 P. L. R. 1903; 41 B. 181=17 Bom. L. R. 799=31 Ind. Cas 105; 38 B. 419. Unless the person to whose state the succession opens, has declared that he would be governed by Muhammedan Law, in matter of succession, Hindu Law would apply. It is immaterial that the person succeeding has signed the declaration. A. I. R 1930 Bom. 191=54 B. 358=32 Bom. L R. 215=127 Ind. Cas. 401. Cutchi Memons are governed by Hindu law only in matter of succession and inheritance. Law of joint family does not apply. A I. R. 1925 Sind 26=78 Ind Cas 817; see also A I. R, 1923 Bom. 148=24 Bom L R.. 978=47 B 369=68 Ind. Cas. 862; 27 C. W. N. 774=47 B. 146 (P. C.).

Object of the Legislation.—The Cutchi Memons claim that they are the descendants of the Muhammedans who settled in Cutch after migrating from the coast of Oman. Except for the historical fact that they were originally Hindus and were converted *to Muhammedanism about four or five hundred years ago, they* are at the present day good and strict Moslems It has been held by the Courts on more than one occasion since the judgment of *Sir Erskine Perry* in the year 1847, in what is commonly known as the *Khojas* and *Memons'* case, that in some particulars they are still governed by the Hindu Customs instead of Muhammadan Law. The Cutchi Memons have always felt aggrieved and considered the principle so established as *incorrect both in law and in practice. Realising this grievance of the Cutchi* Memons a Bill was brought in by Mr Justice Ameer Ali about the end of 1885. That Bill intended to make it permissive to the members of the Cutchi Memons community to declare themselves subject to Muhammadan Law. The Bill provided for such a declaration to be made in a prescribed form. By reason of certain difference of opinion as to its provisions the Bill was not proceeded with. In the year 1896 another Bill was submitted to the Imperial Legislative Council. That Bill was drafted on practically the same lines as the Bill of 1885. The Government of India would appear to have been still of opinion that it would not be right to accept such a measure unless it were shown to be in accordance with the wishes of the entire community. The Bill was referred to a Select Committee. The Committee made its report on the Bill and the matter was allowed to rest there, and as no motion with respect to the Bill was made for 2 years the Bill was removed from the list of business on the 24th March 1900 by an order of the President under rule 43 of the rule [illegible] anner in which the Cutchi [illegible] it would appear that they [illegible] ulars by Muhammadan Law. [illegible]

Short title.

1. This Act may be called the Cutchi Memons Act, 1920.

Power to make a declaration.

2. (a) "Any person who satisfies the prescribed authority—

(a) that he is a Cutchi Memon and is the person whom he represents himself to be;

(b) that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872*; and

(c) that he is resident in British India;"†

may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of this Act, and thereafter the declarant and all his minor children and their descendants shall in matters of succession and inheritance be governed by the Muhammadan law.

(2) " [illegible] declaration under sub secti[illegible] as the L[illegible] and such [illegible] declarati[illegible]

* IX of 1871

† *Substituted and inserted by Act 34 of 1923.*

Notes.—According to section 11 of the Contract Act "every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from contracting by any law to which he is subject." A contract entered into by a minor is void. 30 C. 539 (P. C.) 27 Ind Cas. 733; 32 C. L. J. 214 (P. C.); 46 Ind. Cas. 765; 46 A. 568: 23 P. R. 1888. Unless person has declared that he would be governed by Mahommadan law in matter of succession, Hindu law applies. 54 B. 358.

Rule-making power of Local Government.

3* "(1) The Local Government may make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) for prescribing the authority before whom and the form in which declarations under this Act shall be made;

(b) for prescribing the fees to be paid for the filing of declarations and for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied."

(3) Rules made under the provisions of this section shall be published in the local official Gazette and shall thereupon have effect as if enacted in this Act.

THE DELHI LAWS ACT, 1912.

ACT NO. XIII. OF 1912.

RECEIVED THE G.-G'S ASSENT ON THE 18TH SEPTEMBER, 1912.

An Act to provide for the application of the law in force in the province of Delhi and for the extension of other enactments thereto.

Preamble.

WHEREAS by Proclamation published in Notification No. 911, dated the seventeenth day of September, 1912, the Governor General in Council, with the sanction and approbation of the Secretary of State for India, has been pleased to take under his immediate authority and management the territory mentioned in Schedule A, which was formerly included within the Province of the Punjab, and to provide for the administration thereof by a Chief Commissioner as a separate Province to be known as the Province of Delhi;

And WHEREAS it is expedient to provide for the application of the law in force in the said territory, and for the extension of other enactments thereto; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Delhi Laws Act, 1912; and

(2) It shall come into force on the first day of October, 1912.

Saving of territorial application of enactments.

2. The proclamation referred to in the preamble shall not be deemed to have effected any change in the territorial application of any enactment notwithstanding that such enactment may be expressed to apply or extend to the territories for the time being under any particular administration.

Construction of certain enactments in force in the territories mentioned in Schedule A.

3. All enactments made by any authority in British India and all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under such enactments which immediately before the commencement of this Act were in force in, or prescribed for, any of the territory mentioned in Schedule A, shall in their application to that

* Substituted by Act 34 of 1923.

territory be construed as if references therein to the authorities, or gazette mentioned in column 1 of Schedule B were references to the authorities, or gazette respectively mentioned or referred to opposite thereto in column 2 of that Schedule :

Provided that the Governor General in Council may, by notification in the *Gazette of India* direct that any power or duty conferred or imposed on the Local Government under any such enactment shall be exercised or performed by the Governor General in Council or by such other authority as he may specify in this behalf, and not by the Chief Commissioner of Delhi.

Power of Courts and Local Government for purposes of facilitating application of enactments

4. For the purpose of facilitating the application to the territory mentioned in Schedule A or any part thereof of any enactment passed before the commencement of this Act or of any notification, order, scheme, rule, form or by-law issued, made or prescribed under any such enactment—

(1) any Court may, subject to the other provisions of this Act, construe the enactment, notification, order, scheme, rule, form or by-law with such alterations not affecting the substance as may be necessary or proper to adapt it to the matter before the Court, and

(2) the Local Government may, subject to the other provisions of this Act by notification in *the Gazette of India*, direct by what Officer any power or duty shall be exercised or discharged, and any such notification shall have effect as if enacted in this Act.

Vesting of powers of separate Officers in single Officer.

5. (1) A notification issued under section 4, sub-section (2), may direct that any powers or duties vested in separate Officers may be consolidated and vested in, and discharged by, a single Officer.

(2) Where by such a notification appellate powers are consolidated and vested in a single Officer, the period of limitation for the consolidated appeal shall be the longest period provided in the case of an appeal to any of the Officers whose powers are so consolidated.

Pending proceedings

6. Nothing in this Act shall affect any proceeding which at the commencement thereof is pending in respect of any of the territory mentioned in Schedule A, and every such proceeding shall be continued as if this Act had not been passed :

[illegible] t [illegible]
[illegible] Di [illegible]
[illegible] ll [illegible]
such authorities in the Province of Delhi as the Local Government may, by notification in *the Gazette of India* direct.

Power to extend enactments in force in other parts of British India with modifications and restrictions.

7. The Governor General in Council may, by notification in *the Gazette of India*, extend with such restrictions and notifications as he thinks fit to "the Province of Delhi,"* or any part thereof any enactment which is in force in any part of British India at the date of such notification.

SCHEDULE A.

(*See section 3.*)

THE PROVINCE OF DELHI.

That portion of the District of Delhi comprising the Tahsil of Delhi and the police station of Mahrauli.

* The words within quotations have been inserted by Act VII of 1915.

SCHEDULE B.

(*See section 3.*)

1	2
Reference.	Construction.
1.	The Chief Commissioner of Delhi.
2.	
3.	
4. The Chief Revenue Authority ...	
5. The Chief Customs Authority ...	
6. The Financial Commissioner ...	
7. The Commissioner of Revenue ...	
8.	
9.	
10.	
11. A Secretary to Government or to the Local Government.	
12. All officers and official bodies not mentioned in the foregoing clauses except the Treasurer of Charitable Endowments whose authority extended immediately before the commencement of this Act over the territory mentioned in Schedule A.	Such officials or official bodies respectively as the Local Government may, by notification in *the Gazette of India* direct.
13. The Local Official Gazette of the Punjab.	*The Gazette of India.*

THE DELHI LAWS ACT, 1915.

ACT NO VII OF 1915.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

Received the assent of the G.-G.'s on the 22nd March 1915.

An Act to declare the law in force in certain territory added to the Province of Delhi.

Preamble.

Whereas by proclamation published in Notification No. 984-C., dated the 22nd day of February, 1915, the Governor General in Council, with the sanction and approbation of the Secretary of State for India, has been pleased to take under his immediate authority and management the territory mentioned in Schedule I, which was formerly included within the United Provinces of Agra and Oudh, and to include the said territory in the Province of Delhi with effect from the 1st April, 1915 ;

And WHEREAS it is expedient to declare the law in force in the said territory ; It is hereby enacted as follows :—

Short title and commencement.

1. (1) This Act may be called the [illegible] Laws Act, 1915 ;

(2) It shall come into force on the first day of April, 1915.

Application to added area of law in force in existing Province of Delhi.

2. All enactments (except the enactments specified in Schedule II) for the time being in force in the territory specified in Schedule A to the Delhi Laws Act, 1912,* and notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under such enactments shall be deemed to be in force in the territory specified in Schedule I in the same manner and subject to the same modifications as they are for the time being in the territory specified in the said Schedule to the said Act.

Continuance in added area of certain laws now in force in the United Provinces.

3. The enactments specified in Schedule III, and all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under those enactments shall continue to be in force in the territory specified in Schedule I:

Provided that in the enactments so continued and in all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed thereunder, *references to a Local Government, the Lieutenant Governor of the United* Provinces of Agra and Oudh, or the Board of Revenue for the United Provinces shall be read as referring to the Chief Commissioner of Delhi; references to a High Court or the High Court of Judicature of the North-Western Provinces as referring to the "High Court of Judicature at Lahore"† and references to the official gazette for the United Provinces as referring to *the Gazette of India*.

Provision for the facilitating application of certain enactments.

4. For the purpose of facilitating the application to the territory mentioned in Schedule I of the enactments referred to in section 3, the powers conferred by sections 4 and 5 of the Delhi Laws Act, 1912,* shall be exercisable in respect thereof.

Exclusion of certain enactments from the added area.

5. Save as provided in sections 2 and 3 no enactment which is in force in the United Provinces of Agra and Oudh or any part thereof shall continue to be in force in the territory specified in Schedule I.

Pending proceedings.

6. Nothing in this Act shall affect any proceeding which at the commencement thereof is pending in respect of any of the territory mentioned in Schedule I or of anything arising in such territory and every such proceeding shall be continued as if this Act had not been passed:

Provided that the Local Government may, by notification in *the Gazette of India*, direct that any proceeding, criminal, civil or revenue, other than a proceeding pending before the High Court of Judicature for the North-Western Provinces, shall be transferred to, and disposed of by, the corresponding authority of the Delhi Province.

Amendment of section 7 of Act XIII of 1912.

7. In section 7 of the Delhi Laws Act, 1912,* for the words "the territory mentioned in Schedule A" the words "the Province of Delhi" shall be substituted.

Construction.

8. This Act shall be construed with, and deemed to be part of the Delhi Laws Act, 1912,*

* Act XIII of 1912

† The words within quotations have been substituted by Act 18 of 1919.

SCHEDULE I.

TERRITORY ADDED TO THE PROVINCE OF DELHI.

(*See section 2.*)

Revenue estates of .—

1. Subehpur.
2. Jagatpur.
3. Baqiabad.
4. Beharipur.
5. Saadatpur Mahal Gujran.
6. Saadatpur Musalmanan.
7. Saadatpur Amad Delhi.
8. Wazirabad.
9. Khajudri Paramad.
10. Khajuri Khas.
11. Garhi Mendu.
12. Timarpur.
13. Chandrawal
14. Usmanpur.
15. Ghonda patti Gujran Khadar.
16. Ghonda patti Chauhan Khadar.
17. Andbavli
18. Kaithwara.
19. Silampur Amad Delhi.
20. Ghondli Khadar.
21. Jatwara Khurd.
22. Mubarakpur Reti.
23. Shakarpur Khadar.
24. Nagla Manchi.
25. Shamspur
26. Gharaunda Nimka Khadar.
27. Nagli Razapur.
28. Chilla Sarauda Khadar
29. Qarawalnagar *urf* Dharauti Kalan.
30. Jivanpur Johripur.
31. Mustafabad.
32. Mirpur Turk.
33. Ziauddinpur.
34. Khanpur Dhani
35. Maujpur.
36. Ghonda patti Gujran Bangar.
37. Gonda patti Chauhan Bangar.
38. Jafrabad.
39. Uldanpur.
40. Babarpur.
41. Siqdarpur.
42. Gokalpur.
43. Sabauli.
44. Mandauli.
45. Taharpur.
46. Jhilmila
47. Chandavli *urf* Shadara.
48. Silampur Bangar.
49. Silampur Khadar.
50. Ghondli Bangar.
51. Kakarduman.
52. Khureji Khas.
53. Khureji Baramad.
54. Shakarpur Khas Bangar.
55. Mandavli Fazilpur
56. Hasanpur Bhuapur.
57. Ghazipur.
58. Khichripur.
59. Gharaunda Nimka Bangar (Patparganj)
60. Shakarpur Baramad.
61. Kotla.
62. Chilla Sarauda Bangar.
63. Dalupura.
64. Kondli.
65. Gharauli.

SCHEDULE II.

ENACTMENTS IN FORCE IN THE DELHI PROVINCE WHICH WILL NOT BE IN FORCE IN THE TERRITORY ADDED TO THAT PROVINCE

(*See section 2.*)

Year	Number.	Short title.	Remarks.
1	2	3	4
		Acts of the Governor General of India in Council.	
1887	XVI	The Punjab Tenancy Act, 1887.	...
"	XVII	The Punjub Land Revenue Act, 1887.*	...
		Punjab Acts	
1900	II.	The Punjab Land Preservation (*Chos*) Act. 1900.	...
1912	V.	The Colonization of Government Lands (Punjab) Act, 1912.	...
1913	I.	The Punjab Pre emption Act. 1913	...
"	II.	The Redemption of Mortgages (Punjab) Act. 1913	...

* The entry relating to the Punjab Alienation of Land Act, 1900 has been repealed by Act X of 1927.

SCHEDULE III.

ENACTMENTS IN FORCE IN THE UNITED PROVINCES OF AGRA AND OUDH WHICH WILL CONTINUE TO BE IN FORCE IN THE TERRITORY ADDED TO THE DELHI PROVINCE.

(*See section 3.*)

Year.	Number.	Short title.	Remarks.
1	2	3	4
		Acts of the Governor General of India in Council.	
1882	IV	The Transfer of Property Act, 1882.	...
"	V	The Indian Easement Act, 1881.	...
1891	VIII	An Act to extend the Indian Easements Act, 1882, to certain areas in which that Act is not in force.	...
		United Provinces Acts.	
1901	II.	The Agra Tenancy Act, 1901.	...
"	III.	The United Province Land Revenue Act, 1901.	...
1904	I.	The United Provinces General Clauses Act, 1904.	In so far as it applies to the Agra Tenancy Act, 1901, and the United Provinces Land Revenue Act, 1901.

THE DESTRUCTION OF RECORDS ACT, 1917.

AT NO. V OF 1917.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

Received the assent of the Governor-General on the 28th February, 1917.

An Act to consolidate and amend the law providing for the destruction or other disposal of certain documents in the possession or custody of Courts and Revenue and other public officers.

Preamble.

WHEREAS it is expedient to consolidate and amend the law providing for the destruction or other disposal of certain documents in the possession or custody of Courts and Revenue and other public officers; It is hereby enacted as follows.

Object of the Legislation —In present conditions documents are required to be placed in the custody of a Government officer under a large number of enactments. In many of these Acts no provision exists for destruction of documents [illegible] mpanies under the Registration of Socie- [illegible] nce Societies Act (V of 1912), the Indian [illegible]), and the Indian Companies Act (VII of 1913; nor could such papers be dealt with under the destruction of Records Act, (III of 1879), as it stands. It is accordingly proposed to repeal and re-enact the Act of 1879 so as to make it conform to modern requirements. The principal feature of the draft Bill is that it empowers certain authorities to frame rules for the disposal by destruction or otherwise of documents which they may consider not of sufficient public value to justify preservation, and provides for the delegation to subordinate

officers of the rule-making powers vested in the Local Government. The rule-making powers already vested in the High Courts and the Chief Controlling Revenue-Authorities by Act XIII of 1879 will not be affected by this Bill.—*Statement of Objects and Reasons.*

Short title.

1. This Act may be called the Destruction of Records Act, 1917.

Definitions.

*2 In this Act—

(1) "The Chief Controlling Revenue-authority" means—

(*a*) in the Presidencies of Fort William in Bengal and For St. George and in the United Provinces and Bihar and Orissa,—the Board of Revenue ;

(*b*) in the Presidency of Bombay outside Sindh and the limits of the town of Bombay,—a Commissioner ;

(*c*) in Sind,—the Commissioner ;

(*d*) In the Punjab and Burma,—the Financial Commissioner ; and

(*e*) elsewhere,—the Local Government or such officer as the Local Government may, by notification in the local official Gazette, appoint in this behalf.

(2) "High Court" means the highest Civil Court of appeal in any local area.

Notes.—The following definition of High Court occurs in the General Clauses ... erence to Civil proceedings, shall ... British India in which the Act ... *Vide Section 3 (24) of the General Clauses Act, (IX of 1897)*

Power to certain authorities to make rules for disposal of documents

3. (1) The authorities hereinafter specified may, from time to time, make rules for the disposal, by destruction or otherwise, of such documents as are, in the opinion of the authority making the rules, not of sufficient public value to justify their preservation.

(2) The authorities shall be—

(*a*) in the case of documents in the possession or custody of a High Court or of the Courts of Civil or Criminal jurisdiction subordinate thereto,—the High Court ;

(*b*) in the case of documents in the possession or custody of Revenue Courts and officers, the Chief Controlling authority ; and

(*c*) in the case of documents in the possession or custody of any other public officer,—the Local Government or any officer specially authorised in that behalf by the Local Government.

(3) Rules made under this section by the High Court of Judicature at Fort William in Bengal shall be subject to the previous approval of the Governor General in Council, and rules made by any other High Court, or by a Chief Controlling Revenue Authority or by an officer specially authorized in that behalf by a Local Government, shall be subject to the previous approval of the Local Government

Notes.—The principal feature of the Act is that it empowers certain authorities ... documents which they ... tion and provides for the ... wers vested in the Local ... High Courts and the ... ot affected by this Act.—

* Sections 2 and 3 have been amended by U. P. Act 12 of 1922.

9 C. W. N. ccxxi ; 75 Ind. Cas. 17 ; L. R. 15 P. D. 16 ; 19 C. 469 ; 16 M. 455 ; 8 Bom. L. R. 859 ; 19 C. 460. A Christian does not cease to be a Christian by reason of ex-communication. 46 M. 839 ; but see 75 Ind. Cas. 17.

Resides—The word 'resides" is capable of a variety of meanings according to the circumstances to which it is applicable and the context to which it is found. Each case must be decided by reference to its own circumstances. The 'residence' to which this Act points must be something more than occupation during occasional
, more especially where there is
-able measure of continuance.
for greater portion of a month
-ct. 45 B. 547. But in all cases
out in his judgment the facts relied on as
6 ; 32 A. 203 ; 31 C. L. J. 340. Under the
by Act XXV of 1926, a decree for dissolution of marriage cannot be passed or confirmed after the 25th March 1926, the date of the amending Act, where parties reside in India but are of British domicile. Only decrees passed and confirmed under the Indian Divorce Act before the 15th December 1926 are validated by the *Indian and Colonial Divorce Jurisdiction Act* of the British Parliament in 1926 A. I. R. 1928 Lah 557=10 Lah. 64=30 P. L. R. 250=110 Ind Cas. 706. But where the husband has a foreign domicile, a decree in a divorce made by the Court other than that of a domicile even if it is a divorce made in accordance with the municipal law will have no effect outside the the territory in which the Court granting the decree is situate. 40 C. 215= ... C. W. N. 411. See also *Jolly's Case* 1 Russ and Ry. 237 ; *Convoy*

would do so if the divorce be for a ground of divorce recognised as such in their country, and the forei,
calling in the aid of its
to decree dissolution ..
the marriage was celebrated in India and the matrimonial offence was committed in British India ; (1921) P. 204 ; see also the new amendment of 1926. Residence must be a *bona fide* one. 38 B. 125=15 Bom. L. R 593 ; see also A. I. R. 1935 Bom. 121.

Adultery committed in India.—Whatever the place of marriage may be, the District Court has, under this section, jurisdiction to pass a decree for dissolution of marrige when adultery, the ground for dissolution, has been committed in India. 23 B. 392.

Effect of amendment by Act of 1926—The learned District Judge rightly decided the question of jurisdiction as by the Amending Act 25 of 1926 the jurisdiction of the Indian Courts under s. 2 Divorce Act of 1869, has been taken away ... who

petition." A. I. R 1931 Lah 246=32 P L R. 772=134 Ind. Cas. 515 ; see also *A. I. R. 1928 Lah. 557=10 Lah. 64* Residence alone is not *test* of domicile. Safer method of determining it is to find out whether the person intends to reside permanently or indefinitely in the land of domicile. A. I. R. 1931 Cal. 383=58C. 259= 132 Ind. Cas 89. Indian Courts have no power to dissolve the marriage of persons not domiciled in their jurisdiction. A I R. 1923 Rang. 223=2 Bur. L J. 106=76 Ind. Cas. 597 ; see also A. I R. 1923 Bom. 321=47 B. 843=25 Bom. L. R. 945= 77 Ind. Cas 654 ; A. I. R. 1929 Lah. 419=30 P L R. 622=10 Lah. 607=113 Ind. Cas. 782 ; 115 Ind Cas. 849 ; A. I. R. 1929 Lah. 555=30 P. L. R. 272=115 Ind. Cas 851. Indian Courts have jurisdiction till Indian domicile is given up. A. I. R.

1931 Oudh 126=8 O W. N. 177=131 Ind. Cas. 447. Enquiry of domicile on legal principles is necessary. 144 Ind Cas. 827=60 C 601=37 C. W. N. 255=A. I. R. 1933 Cal 524 (S. B.). It is extremely important to consider question of domicile from the very outset. 135 Ind. Cas 445=58 C. 1332=A I. R. 1932 Cal 161. anting divorce. 129 Ind. Cas 576= of domicile should be treated with Intention of permanent residence is necessary. Presumption is against change of domicile. Wife's domicile is that of her husband 132 Ind. Cas. 89=58 C. 259=A I. R. 1931 Cal. 383 (S. B). Where domicile of origin is British but residence in India is ever since 19 years, so long as there is animus *revertendi* to return to England there is no change in domicile. 135 Ind. Cas. 445=58 C 1332=A. I. R. 1932 Cal 161.

Effect of amendment by Act 30 of 1927—Under the Indian Divorce Act

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context,—

there established under the Act of the a, chapter one hundred and four ;

in the territories for the time being subject to the Government of the Lieutenant-Governor of the Punjab—the "High Court of Judicature at Lahore ;"*

in Burma—"The High Court of Judicature at Rangoon"†

in the Central Provinces—"The High Court of Judicature at Nagpur," ‡

"in Oudh—the Chief Court of Oudh ;" "In Sind—the Chief Court of Sind"; §

and in any other Non Regulation Province and in any place in the dominions of the Princes and States of India in alliance with Her Majesty—the High Court or Chief Court to whose original criminal jurisdiction the petitioner is for the time being subject, or would be subject if he or she were a European British subject of Her Majesty .

In the case of any petition under this Act, "High Court" is that one of the aforesaid Courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last

h" a Judge of a principal Civil

"Oudh," Sind and "Burma"—

in Burma and Sind—a Judge of a District **Court,"

and in any place in the dominions of the Princes and States aforesaid—such officer as the Governor General of India in Council shall from time to time appoint in this behalf by notification in *the Gazette of India* and in the absence of such officer, the High Court in the exercise of its original jurisdiction under this Act :

(3) "District Court" means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdic-

* Words within quotations have been substituted by Act 18 of 1919

† The words within quotations have been substituted by Act XI of 1923.

‡ Inserted by Act VIII of 1835

§ Inserted by XXXII of 1925

lefines "District Judge" to mean in the Division, is repealed by Act IV of 1901 s. 8.

, Act 34 of 1926, by Act XXXIV of 1

tion, or of whose jurisdiction under this Act, the husband and wife reside or last resided together :

(4) "Court" means the High Court or the District Court, as the case may be :

(5) "minor children" means, in the case of sons of Native fathers, boys who have not completed the age of sixteen years, and, in the case of daughters of Native fathers, girls who have not completed the age of thirteen years : in other cases it means unmarried children who have not completed the age of eighteen years :

(6) "Incestuous adultery" means adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity :

(7) "bigamy with adultery" means adultery with the same woman with whom the bigamy was committed :

(8) "marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere :

(9) "desertion" implies an abandonment against the wish of the person charging it : and

(10) "property" includes, in the case of a wife, any property to which she is entitled for an estate in remainder or reversion, or as a trustee, executrix, or administratrix ; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

Resides or last resided together.—As used in the section the word "resides" implies a dwelling either of a permanent nature or for some considerable time. (I.. [illegible] and and wife had no permanent [illegible] Court having jurisdiction at the [illegible] or a short period. 36 C. 964. The word "together" must be read with "last resided" only 22 Bom. L. R. 361 ; 171 P. R. 1911. See also 45 B 547 ; 22 Bom L R 1077 ; 76 P. R. 1916 ; 20 Ind. Cas. 399 ; 44 B. 924 ; 59 Ind. Cas 931 ; 36 C 964 ; 77 P R. 1905 ; 14 W. R. 416 ; 1892 P. J. 153. If both parties are resident within the jurisdiction of the Court at the time of the presentation of the petition the Court has jurisdiction. 22 Bom. L. R. 361 ; 10 Ind. Cas 487 (F. B) ; 53 C. 282. As to the meaning of the word "reside" *Vide*, 30 C. L. J. 314 ; 21 C. 634 ; 13 C. L J 221 ; 38 C. 394 ; 32 A. 203 (F. B) ; 5 Ind. Cas. 871 ; 5 Lah. 147 (F. B.) ; 45 B 547 ; [illegible] (S.B.) ; 10 B. 422 ; 47 B 843 ; 30 C. 215 ; 52 C [illegible] Lah. 916=129 Ind Cas. 113 A resident of Delh [illegible] to transfer and coming to Calcutta to prosecute a criminal case was held not to "reside" within the jurisdiction of Calcutta High Court. A. I R. 1931 Cal. 121=130 Ind. Cas 240. Intention is immaterial for determining question of residence. Residence is a question of fact and depends on evidence in each case. A. I. R. 1933 All. 39= 1933 A. L. J 8 ; see also A. I. R. 1934 Cal. 570=38 C. W. N. 347=152 Ind. Cas. 32.

Sub section (2)—The Judicial Commisssioner, Sind, has jurisdiction to confirm a decree *nisi* of divorce passed on the original side. A. I. R. 1926 Sind 58=91 Ind. Cas. 99.

Sub-section (8)—The term "marriage" does not include Hindu marriage. 17 M. 235. Marriage with another woman with adultery is valid ground for divorce. A. I. R. 1932 Lah. 116=33 P. L. R. 339.

Sub section (9)—The desertion must be against the will of wife. *Smith* v. *Smith*, 1 Sw. & Tr. 359=28 L. J. Mat. 27. Judicial separation can be decreed by reason of the wife's desertion of her husband for two years or upwards without reasonable cause. *Miller* v. *Miller*, 8 P. D. 187 A desertion may be made by the husband where he was imprisoned for 4 years for felony and twice for debt. *Astope* v. *Astope*, 29 L J. Mat. 27. Where a husband after his return from foreign country did not see his wife, a case of desertion was proved. *Lawrence* v. *Lawrence*, 2 S. W. & Tr. 575. For other cases of desertion *vide*, *Hently* v. *Hently*, 33 L. T. 263 ; *Draw* v. *Draw*, 13 P. D. 97 ; *Thomas* v. *Thomas*, (1924) P. 194 ; *Nott* v. *Nott*, 1 P. & M. 251 ;

Yeatman v. *Yeatman*, 1 P. & M. 489 ; *Powell* v. *Powell*, (1922) P. 278 ; *Townsend* v. *Townsend*, 3 P. & M. 129 ; *Garcia* v. *Garcia* 13 P. D 216 But there is no desertion when the parties parted by mutual consent. *Smith* v *Smith*, 1 Sw & Tr. 359. Desertion is not to be held merely by ascertaining which of the parties left the matrimonial home first. That fact may be immaterial. The party who by his or her act intends bringing co-habitation to an end commits the desertion. *Sickert* v. *Sickert*, (1899) P 278. Where the husband is willing to live with wife, but refuses to give up the adulterous life a case of desertion by the husband is proved. *Koch* v *Koch* 68 L J P. 90 A husband may be guilty of desertion although there had been no co-habitation between the parties *De Lanbanque* v. *Lanbanque*, 68 L. J. P. 20. A wife has no right without cause to refuse to allow her husband to have sexual intercourse with her *Synge* v. *Synge*, 70 L J P. 97. Habitual drunkenness is a just cause. *Beer* v. *Beer*, 94 L T. 704. A party who brings co habitation to an end cannot afterwards complain of desertion by the other. *Bradshaw* v. *Bradshaw*, (1897) P. 24 , *Kay* v. *Kay* 73 L. J P 168. A mere refusal to resume co-habitation after agreement to live apart is not desertion. *Brown* v. *Brown*, 73 L. J P. 87. Withdrawal from wife's company under compulsion is not desertion. 3 C. 485 ; *Townsend* v. *Townsend*, 3 P. & D. 129

High Court.—The High Court has jurisdiction where the parties are residents of, and adultery is committed in, 24 Parganas. 3 B. L. R. 67. See 18 A. 375.

District Judge—The Political Resident of Aden is not a District Judge as defined in this section 14 Bom L. R 872 ; 37 B 57 ; 17 Ind. Cas. 215. As regards the jurisdiction of High Courts in a suit for divorce arising between European British subjects resident in Native State, *vide*, 10 B 422. A decree dismissing a suit for dissolution of marriage made by the Judicial Commissioner of Oudh exercising the power of a District Judge is appealable to the High Court for the N. W. P. 4 A. 306. See 39 B. 136 (F. B.) ; 40 B. 109.

Cost of appeal by wife.—In a suit for divorce, a wife though unsuccessful, is entitled to the costs of an appeal if is not unreasonably preferred. 4 C. 260=3 C. L. R. 484.

II—Jurisdiction

Matrimonial jurisdiction of High Courts to be exercised subject to Act

Exception.

4. The jurisdiction now exercised by the High Courts in respect of divorce *a mensa et toro*, and in all other causes, suits and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise; except so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed.

Scope—This section which provides that the jurisdiction in matters matrimonial shall be exercised according to the provisions of this Act and not otherwise, does not preclude the Court from considering whether a marriage was duly solemnized under the provisions of the Christian Marriage Act, and the Court can make a decree, declaring a marriage null and void on grounds other than those contained in s. 18 of this Act. 47 Ind Cas. 544 ; but see *contra*. 13 B. L R 112.

By section of the High Courts Act, such matrimonial jurisdiction was conferred on the High Courts as Her Majesty might by letters patent grant and direct and it was provided that save as by such letters patent might be otherwise directed and without prejudice to the legislative powers of the Governor General, the High Court in each Presidency should have exercised all jurisdiction and every power and authority whatsoever in any manner vested in any of the Supreme Courts. 20 Ind. Cas. 492=38 B 125. The ecclesiastical jurisdiction of the Bombay Supreme Court was limited to persons described and distinguished by the appellation of British subjects, residing in the town and island of Bombay and the factories subordinate thereto and all the territories dependent upon the Government of Bombay. *Ibid.* It was held in *Ardasur Cursetjee* v. *Perozeboye*, 6 M. I A 348=4 W. R. (P. C) 91 that this jurisdiction could not be exercised over the Parsis. By clause 35 of the amended Letters Patent of the High Court, that decision was given effect to by limiting the jurisdiction within the Presidency to "matters matrimonial between our subjects professing the Christian religion" As regards the jurisdiction

of the Calcutta High Court to admit petition for divorce where the parties reside within 24 parganas, *vide* 3 B. L R O. C. J. 67 ; 13 B. L R 109. As regards the jurisdiction of the Patna High Court, *vide* 3 P. L. R. 129=1913 Pat. 127=A. I. R. Pat. 1923, p. 301. This section continues the jurisdiction already possessed by the High Court at the date when the Act came into force. 94 Ind. Cas. 952.

Enforcement of decrees or orders made heretofore by Supreme or High Court.

5. Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras or Bombay sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Courts so enforcing or dealing with the same.

Pending suits.

6. All suits and proceedings in causes and matters matrimonial, which when this Act comes into operation, are pending in any High Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

Court to act on principles of English Divorce Court.

7. Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts are, as nearly as may be, comformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief.

"Provided that nothing in this section shall deprive the said Courts of jurisdiction in a case where the parties to a marriage professed the Christian religion at the time of the occurrence of the facts on which the claim to relief is founded."*

Scope—This section is applicable not only to the grant of relief but also to question of procedure. 55 Ind Cas 259 ; 52 C 556=1925 Cal. 574, but see 30 C. 489 ; 37 C. 613. This section is a residuary section intended to provide for any matters which by inadvertence or otherwise are not dealt with in the Act. It is not unusual in statutory drafting to insert provisions of the nature *exmajore cautela* more especially where an attempt is being made to codify in this country an unfamiliar branch of English Law The expression "rules and principles" points rather to the rules and principles on which the Court deals with these matrimonial cases in requiring a certain degree for evidence and other cognate matters. 47 B. 843 =25 Bom. L. R. 945 Court must look to the interests of society and public morality. A.I.R. 1928 All 338=50A 464=108 Ind. Cas. 117. No decree can be passed on admission alone. A I. R 1931 Lah 2=31 P L.R. 1008=130 Ind. Cas. 401. High Court can grant decrees for dissolution of marriage of foreigners temporarily resident in India. It is legel only in India A I. R 1925 Cal. 874=89 Ind. Cas. 611. Rule of law in England regarding non-publication of banns declaring marriage void is no guide to Indian Court. 144 Ind. Cas 906=55 A. 185=A. I. R. 1933 All. 1221. Rules and principles of the Divorce Court of England and those of the Civil Procedure Code must be conformed. A I R. 1934 Pat. 475=13 Pat 129=15 P. L. T. 353. In considering whether previous marriage is still subsisting the Court must apply the law in India applicable to that marriage at the time. 36 Bom. L. R. 1021. Appellate Court can order costs for prosecuting appeal. A. I. R. 1933 Lah. 5=33 P. L. R. 1075=140 Ind Cas. 503. Decree for judicial separation is *ipso facto* annulled by resumption of co habitation. 137 Ind. Cas. 737=9 O. W. N. 49=A. I. R 1932 Oudh 142 In case of English domicile, Indian Courts have no jurisdiction to dissolve marriage 143 Ind. Cas. 618=A. I. R. 1933 Sind 70. Age of consent is age fixed by law in England at time of marriage. 144 Ind. Cas. 960=1933 A. L. J. 163=55 A. 243=A I. R. 1933 All. 135 Court must be circum-

* The words within quotations have been added by Act X of 1912.

spect where application is by husband after long delay. A. I. R. 1933 Sind 27=26 S. L. R. 423=141 Ind. Cas 284

Principles and rules—Refer to rules *quasi*, substantive rather than mere adjective law. 23 Ind Cas. 242 ; 22 B. 612 ; but see 5 Lah 147 ; 12 Bur. L. T. 199=55 Ind. Cas. 269 ; 1930 Mad. 154=58 M. L. J. 29.

Evidence—The charge of cruelty and the marriage of the parties can be proved by the production of a previous decree for judicial separation and by showing the identity of the parties. 22 C 544 In a case of divorce, if there is no evidence as to the law of the parties, or domicile, the Court will act and grant relief on the general principles of English law. 29 C. 619.

Proviso.—The rulings in 17 M. 235 and 8 Bom. L. R. 856 are of no effect in view of the addition of the proviso.

M. ... ding into this ... he Court of Di ... divorce but that is a forced and unnatural construction. Also it would be necessary to omit the words "subject to the provisions contained in this Act." Had the Legis- ... terms ... nciples ... chosen ... nent of uncertainty where certainty is essential. The doctrine of English Courts has varied from time to time upon this point since 1895 ; domicile alone is recognized as conferring jurisdiction. 47 B 843=25 Bom L. R. 945=1923 Bom. 321 ; see also 2 Bur. L. J. 106=1923 Rang 223 In all divorce cases the petitioner must come into the witness box, he must be sworn, and he must prove his case because, among other things ... collusion between the parties ... lete truth and honesty of the ... 43. In proceedings for divorce ... t *never to be accepted without* ... nding circumstances. A I. R. 1923 Mad. 9 A domicile of choice can only be acquired by residence coupled with an intention of permanent or definite residence. 79 Ind Cas 719.

Extraordinary jurisdiction of High Court.

8. The High Court may, whenever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

Power to transfer suits.

The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge.

Scope.—Such District Judge must be subordinate to the High Court 40 B 109.

Reference to High Court

9. When any question of law, or usage having the force of law, arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon,

the Court may, either of its own motion or on the application of any of parties, draw up a statement of the case, and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

III.—Dissolution of Marriage.

When husband may petition for dissolution.

10. Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution.

Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone

or of marriage with another women with adultery,

or of rape, sodomy, or bestiality,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensa et toro,*

or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Contents of petition

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

Scope—All the grounds of divorce are given in the section. 36 Bom L. R. 1021. Fraud in bringing about a marriage is not a ground of divorce. A. I. R. 1934 Pat. 670 (F B.)=152 Ind. Cas. 1007 Where judicial separation has been granted petition for divorce on the same grounds cannot be entertained. 56 C. 166=32 C. W. N 932 Court must carefully examine all circumstances of married life and particularly circumstances of married wife 50 A. 464.

Adultery of wife.—In a charge of adultery the evidence must be clear. *Winscom* v. *Winscom*, 3 Sw & Tr. 380 ; *Alexander* v. *Alexander*, 2 Sw. & Tr. 95. But under certain circumstances such adultery may be presumed. *Davidson* v. *Davidson*, 2 Jur. N. S 547 ; see also A I. R. 1934. All. 618.

Change of religion.—By a husband and his subsequent marriage is a ground for divorce. 14 Ind Cas 192 ; see also 2 Rang. 199.

coupled with one of the other reasons given in this section. 8 Ind. Cas. 1186 (F. B) Marriage with another woman with adultery is valid ground for dissolution of marriage 136 Ind. Cas

A. I. R. 1933 Lah 507.

legal cruelty. A. I R 19

evidence. A. I. R. 1933 Lah. 728 ; see also A. I. R. 1931 Oudh 259=8 O. W. N. 168=132 Ind. Cas. 773 ; A. I. R. 1932 Pat. 345 (F. B)=11 Pat. 627=140 Ind. Cas. 561 ; A. I. R. 1933 Sind 70 ; A I. R. 1930 Lah. 828=126 Ind. Cas. 527 ; 61 Ind. Cas. 782.

Sodomy.—Carnal knowledge against the order of nature by a man with a woman was held to be sodomy within the meaning of this section. 68 P. R. 1882 ; see also 1 A. 43 ; 6 A 204 ; 59 C. 945=A I. R. 1933 Cal. 12 ; A. I. R. 1932 Lah. 583.

after judicial separation is also

T. 227 ; 45 Ind. Cas. 914. The

th, bodily or mental or reasonable

apprehension of it. 36 Ind. Cas. 381 ; see also A. I. R. 1934 Pat. 475 ; A. I. R.

1933 Lah. 728. Repeated acts of cruelty may also amount to cruelty under this section. 36 Ind. Cas. 982. Communicating contagious and loathsome disease amounts to cruelty. 14 Bur. L R 173 ; see also 83 Ind Cas. 167 ; 39 C. 395 ; A. I. R. 1933 All. 56=1933 A. L. J. 14.

Desertion—Desertion must be against the will of the wife. 8 L. B R. 109 (F. B) Before the two years' period of desertion is over a petition for divorce would be premature and without a cause of action. 21 Ind. Cas 230 ; see also *Wood* v. *Wood*, 13 P D 22 ; *Cudlipp* v. *Cudlipp*, 1 Sw. & Tr. 229 ; *Gargill* v *Gargill*, 1 Sw. & Tr 235. Beastly treatment and desertion by husband are sufficient reasons. 57 C. 891. If cessation of cohabitation is brought about by husband's conduct there is desertion. A. I R 1935 Mad. 541

Where a deed of separation has been executed by the wife, she cannot plead desertion. *Roe* v *Roe*, (1916) P. 153 ; *Dagg* v. *Dagg*, 7 P. & D 17 ; *Crabb* v. *Crabb*, 1 P. & M. 609 Facts constituting desertion may vary *Williams* v *Williams*, 3 Sw. & Tr. 547. A husband who, by his ill treatment, compels his wife to separate from him, and afterwards refuses to receive her, is guilty of desertion *Graves* v. *Graves*, 3 Sw. & Tr 350.

Reasonable excuse.—Where there is a reasonable excuse a husband can desert his wife. *Beer* v. *Beer*, 54 W R. 564 ; *Lawson*, v. *Lawson*, 7 C. W N. ccxiv ; *Synge*, (1901) A C 317 ; *Haswell* v *Haswell*, 1 Sw. & Tr. 502 ; *Faulkes* v. *Faulkes*, 64 L T. 834 ; *Coultpart* v. *Coultpart*, 28 L J. P 21 ; *Heyes* v. *Heyes*, 13 P. D. 11. Where the husband refuses to allow his wife to live with him except under the orders of his mistress and the wife lives apart, it amounts to desertion. 2 Rang. 199.

Adulterer to be co-respondent.

11. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court :—

(1)—that the respondent is leading the life of a prostitute, and that the petitioner knows of no person whom the adultery has been committed ;

(2).—that the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it ;

(3).—that the alleged adulterer is dead.

Prostitute—The addition of co-respondent is not necessary if the wife has been leading the life of a prostitute 3 B L R App. 9 ; *Hooke* v *Hooke*, 27 L J. Mat. 61 ; *Quicke* v. *Quicke*, 31 L. J. Mat. 28

arged by the husband in his answer to
ng committed adultery with the wife is
so 38 M. 466 ; 44 M 982 (F. B) ; 45.
Wheeler, 14 P D 154. But the alleged
wife for divorce against the husband
on the ground of incestuous adultery 30 C 489 , 30 C 490 N. A Court should not lightly excuse a party from making any enquiry which he can reasonably be asked to make as to the adulterer. 49 B 868=27 Bom. L R. 251=A I. R. 1925 Bom. 231. Even a foreigner can be made a co-respondent. 47 B 657 ; 14 C. W N. (cccxxii) Where some of the adulterers are known and some are unknown, the known adulterers should be added as co-respondent *Penty* v *Penty*, 7 P. D. 19. Adulterer must be added as co-respondent, unless Court excuses the omission. A. I. R. 1930 Lah 771=126 Ind.
N. L. J 4=107 Ind. Cas. 667.
as co-respondent in a suit under
in revision by the High Court. A I R. 1928 Cal. 114=54 Cal. 1038=107 Ind. Cas. 475. The Court should enquire into charge of adultery A I R. 1935 Sind 112.

Court to be satisfied of absence of collusion

12. Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or

the adultery, or has condoned the same, and shall also inquire into any counter-charge which may be made against the petitioner.

Duties of Court—Duties of the Court in
are that upon any petition for a dissolution of
shall satisfy itself so far as it reasonably ca.
also whether or not the petitioner has been in any manner accessory to or conniving at the adultery or has condoned the same; and shall enquire into any counter-charges which may be made against the petitioner 31 A 511. Although the refusal
discretionary under this
es and rules on which the
. 690. See also L B. R.
The duties of the Court
3 Ind. Cas. 969.

Counter-charge—A letter written by the respondent to the Judge imputing misconduct to the petitioner will not constitute a 'counter-charge' within the meaning of this section. 62 P. R 1887

Collusion—'Collusion" is secret understanding between parties who join in semblance of hostility. 143 Ind Cas 618=A. I R. 1933 Sind 70. Admission of adultery can not be accepted without sufficient corroboration. 13 Pat. 129=15 P. L. T. 253=A I R. 1934 Pat 475

Accessory to—A person who aids to produce the offence complained of is called an accessory. *Vide Gipps* v. *Gipps*, 11 H. L Cas. 1=10 L. T. 735=33 L. J. Mat 161; *Lancaster* v. *Lancaster*, (1925) p. 114; *Gower* v. *Gower*, 1925) p. 114.

Connivance—The word "conniving" means not merely refusing to see an act
taking any step to prevent adulterous
the husband's eyes, he must reasonably
see also *Ross* v. *Ross*, L. R. 1 P. & D.
usband at his wife's adultery, it must be shown that he gave a willing consent to it; that he was an accessory before the fact; mere negligence, inattention, dullness of apprehension, or indifference, will not suffice; but there must be intention on his part that she should commit adultery, *Allen* v *Allen and D Arcy*, 30 L J Mat. 2; but see *Glennie* v. *Glennie*, 32 L. J Mat. 17; *Morris* v *Morris*, 2 Sw & Tr 530. Connivance is a knowledge, of acquiescence in, the misconduct complained of *Boulting* v. *Boulting*, 3 Sw & Tr 329=33 L J Mat 33, see also 11 Ind Cas 729. For other instances of connivance, *vide Picken* v *Picken*, 34 L J Mat. 22, 41 L J. Mat. 49; *Brown* v. *Brown* 21 L T 81; *Sugg* v *Sugg* 21 L T 81 If a wife, although unwilling to consent that her husband should live in adultery, ultimately gives her consent for the sake of obtaining an allowance from him, she is guilty of connivance. *Ross* v.

Ind. Cas. 235=71 P. L R. 1919 (F B); see also 31 C. L. J. 435; 31 Ind. Cas. 264. As to what does not amount to connivance *vide*, *Bell* v. *Bell*, 58 L. J. P. 54; 41 Ind.
nie v *Glennie*, 32 L. J. P. M. & A. 17;

ot condonation; to be condonation it
and must be followed by co-habitation. 31 C. L. J. 435=47 C 1018; 44 C. 1091=21 C. W. N 717=41 Ind. Cas. 447. It is a question of fact 41 B 36=36 Ind. Cas 800=8 Bom L R. 818. Condonation, being a conclusion of fact and not of law, means a full and absolute forgiveness of a conjugal offence, with knowledge of all that is forgiven; it is not affected by the existence of, and does not operate as a forgiveness of, other unknown adulteries. *Bernstein* v *Bernstein* 63 L J P. 3, (1893) p 292; *Story* v. *Story*, 12 P. D. 195. To be perfect, it must be voluntary and conditional *Cooke* v. *Cooke*, 3 Sw. & Tr. 26; 3 Sw. & Tr. 246. Condonation on the renewal of conjugal intercourse requires strict proof. *Campbell* v. *Campbell*, 5 W R 519; see also *Ellis* v *Ellis*, 4 Sw. & Tr. 154; *Keats* v. *Keats*, 1 Sw & Tr. 334, *Blandford* v. *Blandford*, 8 P. D. 20. A condoned adultery is revived by subsequent adultery. *Bourne* v. *Bourne* (1913) p. 164; *Youd* v. *Youd*, 28 C. 221; *Newsome* v. *Newsome*, L. R, 2 P. & D. 306; 5 M. 118; 39 C. 395.

13. In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed,

Dismissal of petition.

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition.

When a petition is dismissed by a District Court under this section, the petitioner may, nevertheless, present a similar petition to the High Court.

Collusion.—In order to establish collusion against a petitioner and the respondent in a suit for a dissolution of marriage, it is necessary to prove that there was some understanding or agreement between them *Gethin* v *Gethin*, 31 L. J Mat. 43 An agreement between the parties to a divorce suit to withhold any relevant evidence from the Court amounts to collusion *Bacon* v *Bacon and Ashby*, 25 W. R. 560; see also *Usir* v *Ali Seba*, 11 C 651; *Haunt* v. *Haunt*, 39 L T 45; *Butler* v. *Butler*, 15 P. D 66: *Alexander* v. *Alexander*, L R. 2 p 164. Collusion may exist when both being guilty the husband and wife agree to present before the Court the guilt of one only of the parties, in order to obtain a divorce which they both desire. *Gray* v. *Gray*, 2 Sw & Tr 559. Collusion may consist in keeping back evidence or what would be a good answer, or by agreeing to set up a false case. *Jessop* v *Jessop*, 2 Sw & Tr 302 If it is shown that a husband has promised his wife to commit adult[illegible] and that the wife follows a course the [illegible] at adultery takes place subject to that [illegible] d accordingly the Court will hold that [illegible] miss the petition. *Todd* v *Todd*, 35 L J Mat 34 Where a wife, petitioner in a suit for dissolution of marriage, receive monetary assistance from her husband's sister (presumably his agent) *Held*, that was not a collusive arrangement between the petitioner and the respondent *Mally* v *Mally*, 53 S J. 617 Even where wife's adultery is proved, husband's delay and wilful neglect disentitles him for divorce 141 Ind Cas 284=26 S L R. 423=A I R 1933 Sind 27; see also A I R 1930 Cal 418=57 C 215; A I R. 1930 All 822=124 Ind Cas. 465 (S B); A I R 1928 Lah 320=107 Ind Cas. 273 Court must accept with caution admission of adultery But decree can be passed on such admission if it is believed to be true after scrutiny A I R 1927 Lah 491=9 L L J 315

14. In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

Power to Court to pronounce decree for dissolving marriage.

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitation in sections 16 and 17 made and declared:

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

Condonation.

Collusion.—implies an agreement or understanding between the parties, in other words, collusion is held to exist where the initiation of the proceeding for dissolution of marriage is procured or its conduct provided for by agreement or bargain between the spouses or their agents. 44 C. 1091. In the absence of collusion uncorroborated confession of adultery by a respondent may be accepted as evidence. 49 Ind. Cas. 305; see also 11 C. 951.

Adultery of petitioner—is a good ground of refusal to the granting of decree *nisi*. 18 Bom. L. R. 818; 2 Bom. L. R. 690; A. W. N. 1883, 74.

Condonation.—Condonation is a conclusion of fact and not of law and means a conjugal offence followed by cohabitation, of all the circumstances of the particular . L. J. 435; A. I. R. 1929 Rang. 216; 37 C. W. N. 249; A. I. R. 1935 Nag. 49.

Solemnization of marriage—In divorce cases before a final decree is made the Court must come to a distinct finding upon the question whether the marriage was solemnized in India and on what date 31 C. L. J. 340.

Delay.—In instituting a suit shows that petitioner either connived at the adultery or was wholly indifferent to it 3 C 688. See also A W. N. 1887, 272; 12 C. W. N. 1009; 7 M. H C. R. 284; 3 P & D. 53.

Husband's neglect conducing adultery.—is complete answer to a suit for dissolution of marriage by the husband. 5 A 71; A W N 1887, 272; 22 M. 328; 30 C. W. N. 820=44 C. L. J. 25; *Symons* v. *Symons*, (1897) P. D 167.

Cruelty—The cruelty must be specifically pleaded. 3 B. L. R. App. 6. It is in the discretion of the Court to refuse a decree for divorce if the petitioner has been guilty of cruelty even though the cruelty may have been condoned. 3 B. L. R. O. C. I. 36.

Discretion—to be exercised under this section must be a regulated discretion. 8 B H. C. R. O. C. 48 The High Court is bound to act on the principle, followed by the Divorce Courts of England Adultery on the part of the petitioner is very rarely condoned by the Court and the principles on which the Courts in England act in the exercise of this discretion are to be found, in the cases of *Constantinidi* v. *Constantinidi*, (1903) 19 T. L R 699; *Wyke* v. *Wyke*, (1904) 20 T. L. R. 195; *Ticher* v. *Ticher*, 40 T. L. R. 367; 88 Ind Cas. 1029=4 Bur. L J. 47. Ill-treatment and subsequent desertion of wife by husband compelling her to lead a prostitute's life which was given up later is sufficient ground for passing a decree for dissolution. A. I. R. 1930 Cal. 729=57 C. 891=129 Ind. Cas. 426; see also A. I. R. 1926 Cal. 1014=54 C. 80=30 C. W N 820. There must be strict compliance with the provisions of the Act. No decree

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keeping in view the interest of the community at large. A. I. R. 1934 All. 782=151 Ind. Cas. 827.

Res-judicata—Refusal of divorce in a former proceeding is no bar to a subsequent one. 6 P. R 1888 ; see also 45 P. R. 1871.

Relief in case of opposition on certain grounds.

15. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty or desertion without reasonable ... a wife, on the ground of her ... give to the respondent, on his ... or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

... by way of judici- ... . Where a wife ... to the husband ... nd of his wife's adultery. It is not necessary that the husband should take an independent proceeding 47 B 657=25 Bom L. R 289=73 Ind. Cas 304=A. I R 1923 Bom 284. This section has no application to suits for nullity of marriage. *Williams* v. *Williams*, 29 L. J. P & M. 62 ; 33 L. J P. & M. 105. The respondent's prayer can be granted *even where the petitioner withdraws the suit.* 31 A 511 ; 6 B. 416, *Hall* v *Hall*, ... against the adulterer in ... suit for dissolution of ... int of proof of the alleged *of decree in suit* A I. ... of of reasonable fear of ... 864=53 C 436=96 Ind. Cas 932

Decree for dissolution to be *nisi*.

16. Every decree for a dissolution of marriage made by a High Court, not being a confirmation of a decree of a District Court, shall, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

Collusion.

During that period any person shall be at liberty, *in such manner as the* High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of counsel and witnesses ; and otherwise, arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit including a wife if she have separate property.

Whenever a decree *nisi* has been made and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

Scope—Any person excepting respondent and co-respondent and any one acting at instance of either of these may intervene A I. R 1932 Rang 73=10 Rang 115. The words "not being brought before the Court" mean not being brought to the notice of the Court at any time up to the date of intervention A I. R 1927 Oudh 310=103 Ind. Cas 512. For other cases *vide*. A. I R 1933 Lah 98=145 Ind. Cas. 253 ; A I. R 1932. Lah 279=33 P. L R 300, A. I R 1933 Sind 308. (F B).

Service on respondent.—A decree *nisi* need not be served on the respondent. 8 C. 756. *Notice of the application is only intended that any party other than the*

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

Condonation.

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

Collusion.—implies an agreement or understanding between the parties, in other words, collusion is held to exist where the initiation of the proceeding for dissolution of marriage is procured or its conduct provided for by agreement or bargain between the spouses or their agents. 44 C. 1091. In the absence of collusion uncorroborated confession of adultery by a respondent may be accepted as evidence. 49 Ind. Cas. 305 ; see also 11 C 951.

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keeping in view the interest of the community at large. A. I. R. 1934 All. 782=151 Ind Cas. 827.

Res-judicata—Refusal of divorce in a former proceeding is no bar to a subsequent one. 6 P. R. 1888 ; see also 45 P. R. 1871.

Relief in case of opposition on certain grounds.

15. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her ... give to the respondent, on his ... or she would have been entitled ... ng such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

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Decree for dissolution to be nisi

16. Every decree for a dissolution of marriage made by a High Court, not being a confirmation of a decree of a District Court, shall, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

Collusion.

During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of counsel and witnesses ; and otherwise, arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit including a wife if she have separate property.

Whenever a decree *nisi* has been made and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

Scope—Any person excepting respondent and co-respondent and any one acting at instance of either of these may intervene A. I. R. 1932 Rang. 73=10 Rang. 115. The words "not being brought before the Court" mean not being brought to the notice of the Court at any time up to the date of intervention. A. I. R. 1927 Oudh 310=103 Ind Cas 512. For other cases *vide*, A I R. 1933 Lah 98=145 Ind. Cas. 253 ; A I. R 1932. Lah 279=33 P. L R. 300 ; A. I R. 1933 Sind 308. (F. B).

Service on respondent.—A decree *nisi* need not be served on the respondent. 8 C. 756. Notice of the application is only intended that any party other than the

parties to the suit should come in to show cause. 4 B. L. R. O. C. 62, 6 B. 416; 17 C. 570.

Arrears of alimony.—must be paid to the wife before order can be passed making the decree *nisi* absolute. 4 A 295.

Decree nisi.—Under this section a decree *nisi* can be pronounced only by a High Court. 43 Ind. Cas. 519; 29 Ind. Cas. 178. A dissolution suit terminates with decree absolute and not with decree *nisi*. *Ellis* v. *Ellis*, 8 P. D. 188. *Stanhope* v.
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5 Bom. L. R. 339;
84 Ind. Cas. 71 = A. I. R. 1924 Bom. 132.

Confirmation of decree for dissolution by District Judge.

17 Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the senior Judge shall prevail.

The High Court, if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made or such evidence to be taken

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit.

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by the general or special order from time to time directs.

During the progress of the suit in the Court of the District Judge, any person, suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the High Court shall thereupon, if it think fit, remove such suit and try and determine the same as a Court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed; or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

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and wife since that decree was passed and before it has been confirmed or made absolute. 8 Ind. Cas 684 ; 10 A. 559 No notice to the respondent is necessary 59 Ind. Cas. 89 For confirmation co respondent must be made a party. 130 Ind. Cas. 402=32 P. L R. 252=13 Lah 266=A I R 1931 Lah 1 (S B) In undefended proceedings evidence must be sifted with great particularity A I R. 1932 Rang. 73=10 Rang. 115=137 Ind Cas. 426. In intervention proceedings, motive prompting intervention is immaterial when Court is satisfied that charges disentitling petitioner to decree absolute is made out. A I. R. 1932 Rang. 73=10 Rang. 115=137 Ind Cas. 426. Only the District Court whose order for dissolution was confirmed by the High Court can entertain a petition for alimony 40 B. 109=17 Bom. L. R. 948=31 Ind. Cas 331. Only a person professing the Christian faith and domiciled in British India can have a decree for dissolution of marriage 36 Bom L R 492=58 B. 502=150 Ind Cas 1136=A. I R 1934 Bom 230 (F B) Only innocent party can apply to High Court to have a decree absolute under this section. 150 Ind. Cas. 543 =A. I. R 1934 All 624 (S B) ; see also A I R 1934 Lah. 334 (S B)=36 P. L R 66=149 Ind Cas 1009

Execution for costs.—A decree *nisi* for costs cannot be executed before its confirmation 35 P. R. 1887 Application for alimony should be made in the original Court 17 Bom. L R. 948. A decree *nisi* cannot be made absolute after the death of the petitioner. 74 Ind Cas 250=50 C. 153 ; *Stanhope* v. *Stanhope*, 11 P. D. 103

A condoned adultery is revived by the commission of a later matrimonial offence. 53C 436=A. I. R 1926 Cal 864.

High Court—When a decree *nisi* dissolving the marriage of an European British subject is pronounced by a Judical Commissioner of Sind the Court to confirm the decree *nisi* is no longer the High Court of Bombay, but the Court of the Judicial Commissioner, Sind, on its appellate side. 91 Ind. Cas 99=A. I. R, 1926 Sind 58 (F B)

Appointment of officer to exercise duties of King's Proctor.

17A.* The Governor General in Council may appoint for each High Court of Judicature established by Letters Patent an officer who shall, within the jurisdiction of the High Court for which he is appointed, have the like right of showing cause why a decree for the dissolution of marriage should not be made absolute or should not be confirmed, as the case may be, as is exercisable in England by the King's Proctor, and the Governor General in Council may make rules regulating the manner in which the right shall be exercised and all matters incidental to, or consequential on, such exercise.

Notes—Under sub section (4) of section 1 of the Indian and Colonial Divorce Jurisdiction Act, 1926 (16 & 17 Geo 5, ch (4). proceedings before a High Court in India in exercise of the jurisdiction conferred by that Act are to be *conducted in* accordance with rules made
currence of the Lord Chancel
conferring on such officials
tion of each High Court the like right of showing cause why a decree *nisi* should not be made absolute as is exerciseable in England by the King's Proctor under sections 181 and 182 and of the Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. 5 ch. 49). These provisions apply in cases where the parties concerned are British subjects domiciled in England or Scotland The Bill proposes to make provision in the Indian Divorce Act for the appointment of an official to perform similar functions in respect of persons domiciled in India —*Statement of Objects and Reasons.*

IV—Nullity of Marriage.

Petition for decree of nullity

18. Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void.

Grounds of decree.

19. Such decree may be made on any of the following grounds :—

* Inserted by Act 15 of 1927.

25. In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted, or incurred by her during the separation:

Separated wife deemed spinster for purposes of contract and suing.

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use:

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Necessaries.—In *Peter* v. *Fleming*, 6 M. & W. 42, *Baron Parke* observed: "From the earliest time down to the present the word 'necessaries' is not confined in its strict sense to such articles as were necessary to support life, but extended to articles fit to maintain the particular person in the estate, decree and station in life in which he is and therefore we must not take the word 'necessaries' in its unqualified sense but with the qualification as above pointed out" This definition was adopted by the Exchequer Chambei
4 Ex. 32. So the question as to what
and law 13 C. W. N. 643=36 C. 768.
credit for all the costs as between solicit
respect of the institution and prosecution of a divorce suit against her husband. *Ottaway* v. *Hamilton*, 47 L. J. C. P. 725; see also *Wilson* v. *Ford*, 37 L. J. Ex. 30=L R. 3 Ex. 63.

Reversal of Decree of Separation.

26. Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

Decree of separation obtained during absence of husband or wife may be reversed.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts or acts of the wife incurred, entered into or done between the times of the sentence of separation and of the reversal thereof.

Notes.—This section empowers the Court to re-hear an *ex-parte* case in order to do justice to all the parties concerned.

VI.—Protection-orders.

27. Any wife to whom section 4 of the Indian Succession Act, 1865,* does not apply may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

Deserted wife may apply to Court for protection.

Notes.—This section relates to protection order in case of desertion. Such an order may have retrospective effect. *Elliot, In the goods* of 40 L. J. Mat. 76; *Ramsden* v. *Brerly*, 10 Q. B. 142. An order protecting the earnings or property of

* Act X of 1865.

a wife deserted by her husband is confined to money or property acquired by lawfull industry, and does not extend to property acquired by keeping a brothel. *Mason* v. *Mitchel*, 31 L J. Ex. 68. A wife who has obtained an order for protection is entitled to payment of a fund in Court, representing a legacy bequeathed to her. *Kingsley, In re*, 26 Beav. 84; *Cooke* v *Fuller*, 26 Beav. 99; *Coward, In re*, 44 L. J. Ch. 384: *Hughes In re*, 67 L. J Ch. 279. The desertion must be continuous. *Gargill* v. *Gargill*, 1 Sw. & Tr. 235; *Ewart* v. *Chubb*, L R 20 Eq 454.

Court may grant protection-order.

28. The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

Notes.—The petition should state sufficient facts to satisfy the Court of the fact of desertion. *Sewell, Exparte*, 28 L J. Mat. 8. Notice of an application on the part of a wife, deserted by her husband, for a protection order, must be served on him if his whereabouts are known. *Mathew* v. *Mathew*, 19 L. T. 662. An order should be in general terms the Court having no power to decide what title the wife may have to specific property. *Mullineux Exparte*, 1 Sw & Tr. 77 An order obtained by a woman deserted by her husband, for the protection of property acquired since desertion will not enable her to maintain an action commenced before the date of the order for injuries to, or in respect of such property. *Midland Ry.* v. *Pye*, 10 C. B. N S. 179 An order for protection, obtained by a wife, will bar an action for necessaries against the husband. *Tempany* v. *Hakewill*, 1 F. & F. 438. A wife who has been deserted by her husband, and has obtained an order of protection, can bring an action in her own name for libel. *Ramsden* v *Brerly*, 44 L. J. Q B. 46. A protection order obtained by a married woman who has been deserted by her husband, only constitutes her a *feme sole* in respect of her earnings and property acquired after the desertion; it has no effect on property acquired before the desertion *Waite* v. *Morland*, 38 Ch. D. 135; *Hill* v. *Cooper*, 62 L J. Q B 423=1893 2 Q. B 85 By obtaining an order of protection, *a wife does not deprive herself of her right to* alimony *pendente lite*, in a suit subsequently instituted by her for dissolution of marriage. *Hakewill* v *Hakewill*, 30 L J. Mat. 251. A wife having been deserted by her husband, obtained a protection order. On her death, in the lifetime of her husband, intestate, the Court decreed letters of administration, limited to such personal property as she had acquired, or become possessed of since the desertion, without specifying of what that property consisted, to be granted to one of her next-of kin. *Worman In the goods of*, 1 Sw & Tr 513.

Discharge or variation of orders

29. The husband or any creditor of, or person claiming under him, may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it thinks fit so to do, may discharge or vary the order accordingly.

Notes—A husband may come to the Divorce Court at any time, and apply for a discharge of the order. *Hall Exparte*, 27 L. J Mat 19 An application to discharge a protection order is not limited to the lifetime of the married woman. *Mudge* v. *Adams*, 50 L. J. P. 49=6 P. D. 54=44 L T. 185; *Mahoney* v. *McCarthy*, (1892) p 21. An order of protection to a married woman granted by a Police Magistrate or Justice, under 20 & 21 Vict. C. 85, s 21, could only be discharged by the Magistrate or Justice by whom it was made. *Sharpe, Exparte*, 5 B. & S. 322=33 L. J M. C. 152.

Liability of husband seizing wife's property after notice of order.

30. If the husband, or any creditor of, or person claiming under, the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

31. So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

Wife's legal position during continuance of order.

Notes.—On a petition presented by a wife, who had been deserted by her husband, to draw out of Court certain sums of money to which she became entitled: *Held*, that notice of the petition must be served upon the husband, notwithstanding that a protection order had been obtained protecting from the husband the property of the *feme covert*. *Sutcliffe, Ex-parte.* 22 W. R 676. An action is maintainable by wife for earnings after an order of a Police Magistrate upon desertion by her has been living in the time specified.

VII.—Restitution of Conjugal Rights.

32. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife or husband may apply, by petition to the District Court or the High Court, for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Petition for restitution of conjugal rights.

Legal cruelty.—Every act of personal violence or every combination of such acts voluntarily inflicted and productive of hurt or alarm will not constitute legal cruelty on the part of the husband 101 P R 1882.

Notes—The written demand for co-habitation and restitution of conjugal rights required to be made before commencing proceedings upon the party to be cited, need not be made by the petitioner's solicitor at the petitioner's request, such demand is sufficient. *Field* v *Field*, 58 L. J P. 21=14 P. D 26; see also *Smith* v. *Smith*, 59 L. J. P 9=15 P. D 47; *Marshall* v. *Marshall* 5 P. D. 10 at p. 23; *Mason* v. *Mason*, 61 L T. 304; *Tucker Exparte*, 66 L J. P. 65=(1896) p. 83 The Court will not dismiss a petition for the restitution of conjugal rights solely on the ground of delay in presenting the petition. *Beauclerk* v. *Beauclerk*, 71 L. T. 376; see also 27 Ind. Cas. 604=8 L B. R. 256. An agreement to live separate is no answer or bar to a petition for restitution of conjugal rights. *Spering* v. *Spering*, 3 Sw. & Tr. 211; but see *Hunt* v *Hunt*, 4 Deg E. & J 221; *Anquez* v. *Anquez*, 35 L. J. Mat. 93; *Kitchen* v *Kitchen*, 19 L. T. 674; *Besant* v. *Wood*, 12 Ch. D 605. A separation deed, executed by a husband and wife, containing covenant by trustees for the wife not to sue her husband for the restitution of conjugal rights, is a bar to a suit by the wife for the restitution of conjugal rights, *Marshall* v. *Marshall*, 5 P. D 19; *Clerk* v *Clerk*, 54 L J. P. 57; but see *Trees* v. *Trees*, 56 L J. P. 93; *Williams* v. *Williams*, (1921) p 131; *Phillips* v. *Phillips*, (1917) p. 90; *Walter* v *Walter*, (1921) p 302; *Brodie* v *Brodie*, (1917) p. 271. Where a Christian files a suit for restitution of conjugal rights instead of petition under matrimonial jurisdiction, Court can grant decree for relief prayed for. A. I. R. 1930 Bom. 105=32 Bom. L. R. 17=124 Ind Cas. 776.

33. Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which would no the ground for a suit for judicial separation or for a decree of nullity of marriage.

Answer to petition.

Notes.—It can be pleaded that the return is unsafe. (*Redford* v. *Redford*, 20 L. T. 279, or the husband is impotent, (*C.* v. *C.* 32 L. J. Mat. 31; *Rickets* v. *Rickets*,

to a matrimonial offence nor yet that she has previously refused to permit conjugal intercourse. *Reppingal* v. *Reppingal*, 24 W. R. 957 Conjugal rights can be defeated only by acts sufficient to found a decree for a divorce. *Manning* v. *Manning*, Ir. R. 7 Eq. 520. Nothing can be pleaded in bar to suit for restitution but what would entitle the respondent to a judicial separation. *Burroughs* v. *Burroughs*, 2 Sw. & Tr. 303. In a suit for conjugal right, the Court could not reject, on demurrer, an answer which contains only facts which apparently do not constitute a case of legal cruelty. *Stace* v. *Stace*, 37 L. J. Mat. 51. Violent and uncontrollable temper, habitual intemperance, violent conduct in the presence of the husband's guests, assaults on him, acts or threats of violence and offensive language, and false and scandalous statements against his daughters, by which he was obliged to remove them from his house, acts of violence towards his servants—all tending to affect the health and social position—constitute a legal defence to a suit by a wife for restitution of conjugal rights. *D' Arcy* v. *D' Arcy* 11 L. R. Tr 369; *Woodey* v *Woodey*, 31 L. T, 647.

The charge of adultery can be pleaded in the usual manner with particulars. *Green* v. *Green*, 21 L T. 401; see also *Blackmore*, v. *Blackmore*, 18 L T. 450=37 L. J. Mat. 73; *Moore* v. *Moore*, 3 Moore, P. C. 84 An answer denying that the respondant withdrew from co-habitation without just cause, should state the cause of such withdrawal. If he does not, it is bad on demurrer: but the objection is waived by filing a replication. *Ward* v. *Ward* 72 L. J Mat. 120. When an answer to a petition for restitution of conjugal rights contains a prayer for judicial separation, [illegible] the answer on [illegible] rayer for resti- [illegible] a wife in every [illegible] the husband [illegible] 734 Where both the parties are guilty of adultery no suit is maintainable. *Hope* v *Hope*, 1 Sw. & Tr. 94; but see *Seaver* v. *Seaver*, 2 Sw. & Tr 665

VIII.—Damages and Costs

Husband may claim damages from adulterer

34. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court limited to such [illegible] mages from any person on [illegible] wife of such petitioner. [illegible] ulterer and the wife unless the Court dispenses with such service, or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said Court, although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

[illegible] a co-respondent in divorce [illegible] iffered, the object is not to [illegible] ant factor 52 C 379=29 C. W. N. 350=86 Ind Cas 1018=A I R 1925 Cal 585 (F. B), *Bicker* v. *Bicker*, 67 L. T. 721; *Derbyshire* v *Derbyshire*, 62 L T 664; *Keys* v. *Keys*, 11 P. D 102; A. I R. 193 Oudh 259; 56 C 530 When in a suit for dissolution of marriage on the ground of wife's adultery the husband puts forward a claim for damages against the co respondent the Court should have regard to the following

[illegible]

against the co respondent, the petition should specify the amount claimed *Spedding* v. *Spedding*, 31 L. T Mad 96 Claims for damages are placed wholly under the jurisdiction of the Divorce Court, and can only be made by petition, and the damages recovered are placed under the control of the Court. The petition must be served on the wife, unless the Court dispenses with such service The petition must be dismi[illegible] if the petitioner has been accessory to or conniving at the adultery complained of has condoned the same. *Bernstein* v. *Bernstein*, 63 L. J. P. 3 Where a co-

does not appear, the jury is bound to rged and to assess damages against him. im for damages having been formally reinstated in the petition, the petitioner having failed to show that it was withdrawn in error, or that an altered state of circumstances had arisen which would justify its reinsertion. *Sykes* v. *Sykes*, 38 L. J. Mat. 12. The measure of damages is the value of the wife of whom the husband has been deprived. *Cowing* v. *Cowing*, 33 L. J. Mat. 149. A claim for damages in a divorce suit is founded upon the hypothesis that the husband has suffered injury by being deprived of his wife's society through the wrongful act of the co-respondent. In order to award any damages it is necessary to find (1) that the husband has in fact been damnified; (2) that such damage has been brought about by the wrongful act of the co-respondent without any fault on the part of the husband. It is no part of the functions of the jury to punish the adulterer for his immorality. Their sole duty is to compensate the husband for the injury (if any) which he has suffered through the wrongful act of the co-respondent. If a husband has a virtuous wife taken from him by contrivance of another man, he is entitled to damages commensurate with the loss of such a wife; but if she has led a loose life before marriage, her value is not the same as that of a virtuous woman. In estimating the amount of damages to be awarded, the fact that the wife was earning money, of a portion of which the petitioner had the advantage may properly be taken into account. *Derbishire* v. *Derbishire*, 62 L. T. 664 Where the co respondent was ordered to pay certain sum to the petitioner as compensation and further sum into Court if he failed to marry the respondent, the direction as to further payment is bad. A I. R. 1930 Lah. 321=11 Lah 303=31 P. L. R. 590.

Power to order adulterer to pay costs.

35. Whenever in any petition presented by a husband, the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co respondent to pay the whole or any part of the costs of the proceedings:

Provided that the co-respondent shall not be ordered to pay the petitioner's costs—

(1) if the respondent was, at the time of the adultery, living apart from her husband and leading the life of a prostitute, or

(2) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

Power to order litigious intervenor to pay costs.

Whenever any application is made under section 17, the Court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

Costs.—Adultery committed by one co-respondent, condoned by the husband, is revived by subsequent adultery with another co-respondent. In such a case a decree *nisi* will be passed against both co-respondents. Costs will be given only against the co-respondent with whom the subsequent adultery was committed. 28 C. 221 Where wife is responsible for suit for divorce she can be made to pay husband's

559; but see 77 Ind. Cas. 133.

Costs of a wife in a divorce suit should be paid by the husband. 5 B. L. R. App. 9; 9 M. 12; 3 B. L. R. Ap. 5; 30 C. 631=7 C. W. N. 565; 14 C. 580; 19 B. 293; 23 C. 913; 23 C. 916 N.; 25 C 222=2 C. W. N. 37; 9 B L. R. Ap. 6; 5 C. 357; 29 C. 619. Where a petition for the dissolution of marriage on the ground of adultery is made and is filed by the husband and the wife enters an appearance and denies the allegations against her, she has an absolute right to require her husband to furnish her with funds sufficient to enable her to make a full and satisfactory defence to obtain such assistance from counsel as is reasonable under the circumstances, 1922 All. 504.

IX.—*Alimony.*

36. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Alimony *pendente lite*.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

it shall in no case exceed one-fifth of three years next preceding the date of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

during which alimony it shall continue, in the made absolute. 36 C. 1081; 49 Ind. Cas. 209.

Amount of alimony.—This section provides that such alimony shall not exceed one fifth of the husband's net income. Net income has its ordinary meaning—the amount of income minus deductions on account of income tax, charges for pension fund and the like. Expenses of maintaining children and liquidation of debts may be taken into consideration in allotting the alimony 14 M 88; see also 6 C. W. N. 444; 36 C. 264; 11 Ind. Cas. 813; A. I. R 1933 All. 56=55 A. 134. While the wife is living with the co-respondent no alimony should be granted 3 B. L. R. App. 13. Court can grant alimony pending suit when reasonable, specially where the husband has forced the wife to prostitution. 12 S L. R 89=49 Ind. Cas. 203 Appellate Court can continue order of alimony but cannot ordinarily increase alimony. A. I. R. 1933 Lah 5=33 P. L. R. 1075=140 Ind. Cas 503.

After a decree *nisi* in a suit has been passed alimony *pendente lite* cannot be granted. 11 C. 354; but see 23 C 913

37. The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

Power to order permanent alimony.

and the District Judge may, if he thinks fit, on the confirmation of any decree of his, declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or exceeding her own life, as hav of the husband, and to the co for that purpose may cause a proper instrument to be executed by all necessary parties.

In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Power to order monthly or weekly payments.

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.

Scope—This section limits the power of Court to make an order for permanent alimony to cases in which a decree has been made declaring a marriage to be dissolved or where a decree for judicial separation has been obtained by the wife. The section omits to give such power to the Court, where the decree declares the marriage null and void. 48 C. 636; see also A. I. R. 1935 Oudh 133. Subsequent

cohabitation annuls decree for judicial separation and permanent alimony. A. I. R. 1924 Rang. 314=2 Rang. 163=83 Ind. Cas. 566. Wife innocent at divorce time is not disentitled to alimony by subsequent misconduct. 25 S L. R 458=A. I. R. 1932 Sind 112. Appellate Court can increase amount of alimony in appeal by husband. 35 C. W. N. 1185 P. C. Court can make subsequent order for enhanced amount. *Ibid.*

permanent alimony must after the confirmation of 987.

Discretionary—The power conferred under this section is discretionary. 38 A. of a lump sum *The principle on* L. R App. 34; marriage on the adultery alleged was not proved, it is not competent to the Court as part of the decree in the suit to grant permanent alimony to the wife. 43 M. L. J. 763=46 M. 133=17 L. W. 19=23 M. W N. 184

District Judge—Cannot order permanent alimony before his decree in the suit is confirmed. 13 P R. 1891

Court may direct payment of alimony to wife or to her trustee.

38. In all cases in which the Court makes any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

Notes.—*Vide* 11 Ind Cas 813, 14 M. 89.

X.—Settlements.

Power to order settlement of wife's property for benefit of husband and children.

39. Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it thinks fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the

at the time of the execution thereof

Settlement of damages.

The Court may direct that the whole or any part of the damages recovered under section 34 shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.

Notes—It is competent to the Court to make an order for the settlement of damages after the decree *nisi* has been made absolute. *Billingay* v. *Billingay*, 35. L. R. J. P. 84=L. R. I. P 168; see also *Taylor* v *Taylor*, 39 L. J. Mat 23; *Meyern*. v. *Meyern*, 46 L. R. 1 P 5, *Forster*, v *Forster*, 3 Sw. & Tr. 158; *Clark* v. *Clark*, 2 Sw. & Tr. 520, *Speeding* v. *Speeding*, 32 L. J Mat. 31.

Inquiry into existence of ante-nuptial or post nuptial settlements.

40. The High Court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage,

and the District Court, after its decree for dissolution of marriage or of nullity of marriage has been confirmed,

may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or a portion of the

property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the Court seems fit :

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.

Notes.—The Court has power to order a variation of the settlement. *Nunveley* v. ; *Forsyth* v *Forsyth*, 61 L. J. P. 13=(1891) ments to the detriment of infant children. This power can only be exercised where vary the marriage settlement is founded has been pronounced by the Court *Moor* v. *Moor*, 60 L. J. P. 76 ; see also *Midwinter* v. *Midwinter*, 61 L. J P 1=(1892) P. 28. The power given to the Court of varying settlements after a final decree for dissolution of marriage, is a power to be exercised once for all, and an order made under it is not liable to be varied on the ground of the change of circumstances since the date of the order. *Benyon* v. *Benyon*, 59 L J. P 39. The Court has power to make provision for the maintenance of children above the age of sixteen years *Thomasset* v. *Thomasset*, 63 L. J P. 140 The Court has not power to order the executor of a deceased petitioner the husband, to be made a party for the purpose of continuing proceedings to vary a settlement where the petitioner is dead, there are no children and the proposed variation would not be for the benefit of the wife. *Thomson* v *Thomson*, 65 L. J. P. 80=1896 P. 263.

XI—Custody of Children.

Power to make orders as to custody of children in suit for separation

41. In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree as it deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said Court.

Custody of Children.—The Court has wide discretion regarding custody of children 69 P. R 1870 , see also 6 B L. R 318 ; 5 B. L. R. 71 ; 70 P. R. 1873.

Power to make such orders after decree.

42. The Court, after a decree of judicial separation, may upon application (by petition) for this purpose make, from time to time, all such orders and provision, with respect to the cation of the minor children, the marriage of the decree, or for placing such children under as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.

Custody of Children.—No formal prayer need be made in the original petition for judicial separation. 18 C 473.

Power to make orders as to custody of children in suits for dissolution or nullity.

43. In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in or removed to, a High Court, the Court may from time to time, before making its decree absolute or its decree (as the case may be), made such interim orders, and may make such provision in the decree absolute or decree,

and in any such suit instituted in a District Court, the Court may from time to time, before its decree is confirmed, make such interim orders, and may make such provision on such confirmation,

as the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the suit ;

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the Court.

ide by a District of the children. ...e confirmation of the decree by the High Court. 152 L. R. 1919.

Power to make such orders after decree or confirmation.

44. The High Court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court, after a decree for dissolution of marriage or of nullity of marriage has been confirmed,

may upon application by petition for the purpose, make from time to time all such orders and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

Notes.—Where after obtaining a decree *nisi* for dissolution of marriage : and an order for the custody of the children of the marriage, the petitioner dies, the High Court has no jurisdiction to confirm the decree, or to make an order in the proceedings for the custody of the children. *Butterfield* v *Butterfield*, 74 Ind. Cas. 250=50 C 153. Application for custody and maintenance of the children of the marriage ... nd Cas 778 ; see also 18 C. 473. In *D' Alton v.* ... , *Sir R Phillimore* said : "The first duty of the ... benefit of the children, and that should be the paramount consideration of th... order as to the custody of children ... rights or after its termination *Cha*... *Seddon*, 2 S. & T. 640 If the perman... o that effect should be inserted in the petition *Seymour* v. *Seymour*, 1 Sw. & Tr. 332 ; 18 C. 473 ; 41 C 714. The Court after a final decree had no power to vary or alter an ... & Tr. 192. The Court ... until they attain the ... 34. But the Court has ... custody of children upwards of sixteen years. *Ryder* v. *Ryder*, 2 Sw. & Tr 225 ; *Thomasset* v. *Thomasset*, (1894) P. 295. It is the duty of the Court to consider all the circumstances of the particular case. *Syminton* v. *Syminton*, L. R 2 H. L (Sc) 415 Welfare of the children must be the chief consideration in deciding question of custody. A I. R. 1932 Oudh 182=9 O. W. N. 362=7 Luck. 683 ; see also A. I. R. 1928 All. 677=1929 A. L. J. 65=171 Ind. Cas. 627. In case of children of tender years mother is entitled to custody. A. I. R. 1933 All. 56=55 A. 134=1933 A. L. J 14=145 Ind. Cas. 845.

Interim Orders.—The Court has jurisdiction to pass interim orders. *Thomson* v. *Thomson*, 2 Sw. & Tr. 402 ; *Cubley* v. *Cubley*, 30 L. J. Mat 161. It can depart from the common law rule in passing such orders. *Shart* v. *Shart*, 1 Sw. & Tr. 251. *Curtis* v. *Curtis*, 1 Sw & Tr 75 A father is entitled at common law to the custody of the child at its mother's breast, and the Court in making an order as to the custody *pendente lite*, will not unless some good cause is shown, take away this right. *Cartledge* v. *Cartledge*, 2 Sw. & Tr 567 ; *Thomasset* v. *Thomasset*, (1894) P. 295 ; *In re Agar Ellis*, 24 Ch. D 347 ; *Boynon* v. *Boynon*, 1 Sw. & Tr. 324 ; *Allen* v. *Allen*, 29 L. J. Mat. 166. An *exparte interim* order can be passed restraining one of the parents from removing the child out of the jurisdiction of the Court. *Harris* v. *Harris*, 63 L. T. 262 ; *Portugal* v. *Portugal*, (Eng.) 15 W. R. 9 ; *Allen* v. *Allen*, 54 L. J. P 77.

Access.—In exercising its discretion in the matter of access to the children by their parents pending suit, the Court is mainly influenced by consideration for the interest of the children *Philip* v *Philip*, 41 L. J. P. 89 ; See also *Thomson* v. *Thomson*, 2 Sw. & Tr 402 ; *Codrington* v. *Codrington*, 3 Sw. & Tr. 496.

...both the parties are before ...ent party has the *prima* ...*n*, 29 L. J. Mat. 106. But ... a child is to be exercised

with discretion, and the benefit and interest of the infant is the paramount consideration and not the punishment of the guilty spouse. *Mozley* v. *Mozley*, (1910) P. 190; see also *Bagnall* v. *Bagnall*, 54 S. J 738. Where paternity of a child is questioned it must be raised by the opposite party. *Gordon* v. *Gordon*, 72 L J. P. 34=(1903) P. 92.

XII—Procedure.

Code of Civil Procedure to apply.

45. Subject to the provisions herein contained, all proceedings under the Act between party and party shall be regulated by the Code of Civil Procedure.

Notes.—Party should not be lightly excused from effecting personal service of the petition, should circumstances rendered the course desirable in prefererce to the practice of service by registered post. 40 B. 368=27 Bom L. R 251=A. I. R. 1925 Bom. 231. In a suit for dissolution of marriage, Court should frame issues Issue for damages is necessary A I. R 1933 Sind 134 The Court can allow evidence by affidavit by virtue of this section 38 C W. N. 969.

Forms of petitions and statements.

46. The forms set forth in the Schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

Petition to state absence of collusion.

47. Every petition under this Act for a decree of dissolution of marriage or of nullity of marriage, or of judicial separation shall * state that there is not any collusion or connivance between the petitioner and the other party to the marriage;

Statements to be verified.

the statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

Suits on behalf of lunatics.

48. When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

Suits by minors

49. Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking† shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

Service of petition.

50. Every petition under this Act shall be served on the party to be affected thereby, either within or without British India, in such manner as the High Court by general or special order from time to time directs:

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do

Notes—When the service on the co-respondent is dispensed with the Court should assign reasons for it 1896 P J 221.

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* Certain words after this, which were repealed by Act VII of 1870, have been omitted.

† Certain words, which were repealed by Act VII of 1870, have been omitted. For Court-fee, see now Sch. II of Act VII of 1870.

It is essential, in suits for dissolution of marriage that petition of the plaintiff should be personally served under this section on the respondent or that sufficient notice of its contents should be given to him. 12 C. W. N. 1009.

51. The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness :

Mode of taking evidence.

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

Notes.—Respondent if willing is competent witness to prove adultery. 57 Cal. 1159=129 Ind. Cas. 576=A. I. R. 1931 Cal. 1.

52. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Competence of husband and wife to give evidence as to cruelty or desertion.

53. The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors.

Power to close doors.

54. The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do.

Power to adjourn.

55. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from under the the laws, rules, and orders from the time being in force :

Enforcement of and appeal from orders and decrees.

Provided that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage : nor from the order of the High Court confirming or refusing to confirm such decree :

No appeals as to costs.

Provided also that there shall be no appeal on the subject of costs only.

Appeal.—No appeal lies from decree refusing to allow dissolution of marriage passed by District Judge in Upper Burma. 19 Ind Cas. 53 (F. B.). Unsuccessful appeal by wife, husband need not pay costs to wife 37 C W. N. 249=60 C. 318=A. I. R. 1933 Cal. 388. Provisions of the Civil Procedure Code are to be followed regarding enforcement of and appeal from decrees and orders under the Act. A. I. R. 1928 Cal. 513=32 C. W. N. 179

Appeal from decree absolute—is competent even though no appeal has been preferred against decree *nisi*. 22 B. 612.

Limitation.—*Vide* 22 B. 612 ; 6 B. 487.

Additional evidence—in the appellate Court is allowed. 4 A. 306. See also 5 B. L. R. 71 ; 20 B. 362 ; 84 P. L. R. 1904 , 56 P. R. 1904 ; 18 P. R. 1903 ; 10 A. 375.

56. Any person may appeal to Her Majesty in Council from any decree (other than a decree *nisi*) or order under this Act of a High Court made on appeal or otherwise,

Appeal to Queen in Council.

and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council.

XIII—Re-marriage.

Liberty to parties to marry again.

57. When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,

or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction,

or when any such appeal has been dismissed,

or when in the result of any such appeal any marriage is declared to be dissolved,

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when in the result thereof the t sooner, it shall be lawful for again as if the prior marriage had been dissolved by death.

Notes—The marriage of a woman with the petitioner during the life-time the High Court former husband, ed null and void under section 18. 19 Ind. Cas. 778; 48 C 636; 2 A. L. J. 420 (F B); 38 M. 452; 34 A 202

English clergymen not compelled to solemnize marriages of persons divorced for adultery.

58. No clergyman in Holy Orders of the* Church of England* shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to *any suit, penalty or censure* for solemnizing or refusing to solemnize the marriage of any such person.

English minister refusing to perform ceremony to permit use of his church

59. When any minister of any church or chapel of the said * Church refuses to perform such marriage service between any persons who but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in Holy Orders of the said Church entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage service in such church or chapel.

XIV—Miscellaneous.

Decree for separation or protection order valid as to persons dealing with wife before reversal.

60. Every decree for judicial separation or order to protect property, obtained by a wife under this Act shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

No reversal, discharge, or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any

* Certain words, which were repealed by Act XII of 1873, have been omitted.

contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge or variation thereof.

Indemnity of persons making payment to wife without notice of reversal of decree or protection-order.

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer, or other Act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

unless, at the time of the payment, transfer, or other act, such persons had notice of the reversal, discharge or variation of the decree or order or of the cessation or discontinuance of the separation.

Bar of suit for criminal conversation.

61. After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife

Notes—Under s. 61, the Crown is not prevented from prosecuting and punisbing the alleged adulterer under s 497 I. P. Code, on the application of the injured husband. A I R. 1928 Lah. 50=10 L L. J. 250=29 Cr L. J. 382=108 Ind. Cas. 389; but see A. I R. 1935 Oudh 506.

Power to make rules.

62. The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same:

Provided that such rules, alterations and additions are consistent with the provisions of this Act and the Code of Civil Procedure.*

All such rules, alterations and additions shall be published in the local official Gazette.

SCHEDULE OF FORMS.

No. 1.—PETITION BY HUSBAND FOR A DISSOLUTION OF MARRIAGE WITH DAMAGES AGAINST CO-RESPONDENT, BY REASON OF ADULTERY.

(*See Section* 10 *and* 34.)

In the (High) Court of
To the Hon'ble Mr. Justice [*or* To the Judge of]
The day of 186 .
The petition of *A B.* of

SHEWETH,

1. That your petitioner was, on the day of , one thousand eight hundred and , lawfully married to *C. B*, then *C. D*, spinster at†

2. That from his said marriage, your petitioner lived and cohabited with his said wife at and at , in , and lastly at in , and that your petitioner and his said wife have had issue of their said marriage *five* children, of whom *two* sons only survive, aged respectively *twelve* and *fourteen* years.

3. That during the *three* years immediately preceding the day of , one thousand eight hundred and , *X Y* was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that on divers occasions during the said period, the dates of which are unknown to your petitioner the said *C. B.* in your petitioner's said house committed adultery with the said *X. Y.*

* See Act V of 1908.

† If the marriage was solemnized out of India, the adultery must be shown to have been committed in India.

or the

issolu-
ooo as
l wife,
o this

(Signed) *A. B.**

Form of Verification.

1. *A. B*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

No. 2 —RESPONDENT'S STATEMENT IN ANSWER TO NO 1.

In the Court of the day of

Between *A. B*, petitioner,
C B, respondent, and
X Y, co-respondent.

C. B., the respondent, by *D E*, her attorney [*or* vakil], in answer to the petition of *A B*, says that she denies that she has on diverse or any occasions committed adultery with *X. Y.*, as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this (Hon'ble) Court will reject the said petition

(Signed) C. B.†

No. 3.—CO RESPONDENT'S STATEMENT IN ANSWER TO No. 1.

In the (High) Court of

The day of

Between *A. B.*, petitioner,
C. B, respondent, and
X. Y, co-respondent.

X.
denies
Wh
of the said petitioner and order him to pay the costs of and incident to the said petition.

(Signed) *X. Y.*,

No. 4.—PETITION FOR DECREE OF NULLITY OF MARRIAGE
(*See section 18*)

In the (High) Court of
To the Honb'le Mr. Justice [*or* To the Judge of]
The day of 186 .
The petition of *A B*, falsely called *A. D.*

SHEWETH,

1 That on the day of , one thousand eight hundred and , your petitioner, then, a spinster, eighteen years of age, was married in fact, though not in law, to *C. D*, then a bachelor of about thirty years of age, at [*some place in India*]

2. That from the said day of , one thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said *C. D*, at divers places and particularly at , aforesaid.

3. That the said *C. D*, has never consummated the said pretended marriage by carnal copulation.

4. That at the time of the celebration of your petitioner's said pretended marriage, the said *C D.*, was, by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and the said *C D.*, with respect to this subject of this suit.

Your petitioner therefore prays that this (Hon'ble) Court will declare that the said marriage is null and void.

(Signed) *A. B.*

Form of Verification · *See No. 1.*

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* The petition mut be signed by the petitioner

† If the marriage was solemnized out of India the adultery must be shown to have been committed in India.

No. 5.—PETITION BY WIFE FOR JUDICIAL SEPARATION ON THE GROUND OF HER HUSBAND'S ADULTERY.

(*See section 22.*)

In the (High) Court of
To the Hon'ble Mr. Justice [*or* To the Judge of].
The day of 186
The petition of *C. B.*, of ,
the wife of *A. B.*,

SHEWETH,

1. That on the day of , one thousand eight hundred and sixty , your petitioner then *C. D.*, was lawfully married to *A. B.* at the Church of , in the .

3. That on divers occasions in or about the months of *August*, *September*, and *October*, one thousand eight hundred and sixty , the said *A. B.*, at aforesaid, committed adultery with *E F.*, who was then living in the service of the said *A. B.*, and your petitioner at their said residence aforesaid.

4. That on divers occasions in the months of *October*, *November* and *December*, one thousand eight hundred and sixty , the said *A. B*, at aforesaid, committed adultery with *G. H*, who was then living in the service of the said *A B*, and your petitioner at their said residence aforesaid.

5. That no collusion or connivance exists between your petitioner and the said *A. B.*, with respect to the subject of the present suit.

Your petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

(Signed) *C B.*†

Form of Verification : see No. 1.

No. 6—STATEMENT IN ANSWER TO No. 5.

In the (High) Court of

B. against *B.*
The day of .

The respondent, *A. B.*, by *W. Y*, his attorney [*or* vakil] saith,—

1. That he denies that he committed adultery with *E. F*, as in the third paragraph of the petition alleged.

2. That the petitioner condoned the said adultery with *E. F.*, if any.

That he denies that he committed adultery with *G. H*, as in the fourth paragraph of the petition alleged

4. That the petitioner condoned the said adultery with *G. H.*, if any.

Wherefore this respondent prays that this (Hon'ble) Court will reject the prayer of the said petition.

(Signed) *A. B.*

No. 7—STATEMENT IN REPLY TO No 6.

In the (High) Court of

B. against *B.*
The day of .

The petitioner *C. B*, by her attorney [*or* vakil], says,—

1. That she denies that she condoned the said adultery of the respondent with *E. F*, as in the second paragraph of the statement in answer alleged.

2 That even if she had condoned the said adultery, the same has been revived by the subsequent adultery of the respondent with *G. H.*, as set forth in the fourth paragraph of the petition.

(Signed) C. B.

* State the respective ages of the children.

† The petition must be signed by the petitioner.

No. 8—PETITION FOR A JUDICIAL SEPARATION BY REASON OF CRUELTY.

(See section 22).

In the (High) Court of
To the Hon'ble Mr. Justice [*or* To the Judge of].
The day of 186 .
The petition of *A.B.* (wife of *C.B*) of

SHEWETH,

1. That on the day of , one thousand eight hundred and , your petitioner then *A.D.*, spinster, was lawfully married to *C.B*, at .

2. That from her said marriage, your petitioner lived and cohabited with her said husband at until the day of , one thousand eight hundred and , when your petitioner separated from her said husband as hereinafter more particularly mentioned, and that your petitioner and her said husband have had no issue of their said marriage.

3. That from and shortly after your petitioner's said marriage, the said *C B.* habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane, or with some other weapon.

4. That on an evening in or about the month of , one thousand eight hundred and , the said *C.B*, in the highway and opposite to the house in which your petitioner and the said *C.B*, were then residing at aforesaid, endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of *F.D.*, your petitioner's brother.

5. That subsequently on the same evening, the said *C B*, in his said house at aforesaid, struck your petitioner with his clenched fists a violent blow on her face.

6. That on one Friday night in the month of , one thousand eight hundred and , the said *C B*, in , without provocation, threw a knife at your petitioner, thereby inflicting a severe wound on her right hand.

7. That on the afternoon of the day of , one thousand eight hundred and , your petitioner by reason of the great and continued cruelty practised towards her by her said husband, with assistance withdrew from the house of her said husband to the house of her father at , that [illegible]

husband with respect to the subject of the present suit.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a judicial separation between your petitioner and the said *C.B*, and also order that the said *C.B.*, do pay the costs of and incident to these proceedings.

(Signed) *A B.*

Form of Verification · see No. 1

No. 9.—STATEMENT IN ANSWER TO No. 8.

In the (High) Court of The day of ,
Between *A.B*, petitioner, and
[illegible] respondent.
[illegible] cause, by *W J.*, his cruelty towards the [illegible]

(Signed) *C. B.*

No. 10.—PETITION FOR REVERSAL OF DECREE OF SEPARATION.

(See section 24.)

In the (High) Court of
To the Hon'ble Mr. Justice [*or* To the Judge of]
The day of , 186
The petition of *A. B.*, of

SHEWETH,

1. That your petitioner was on the day of , lawfully married to .

That on the day of this (Hon'ble) Court, at the petition of, pronounced a decree affecting the petitioner to the effect following, to wit,—

Here set out the decree.

3. That such decree was obtained int he absence of your petitioner who was then residing at

[*State facts tending to show that the petitioner did not know of the proceedings; and, further, that had he known he might have offered a sufficient defence*],

or

That there was reasonable ground for your petitioner leaving his said wife for that his said wife.

[*Here state any legal grounds justifying the*] *petitioner's separation from his wife*]

Your petitioner, therefore, prays that this (Hon'ble) Court will reverse the said decree.

(Signed) *A. B.*

Form of Vertification : see No. 1.

NO. 11—PETITION FOR PROTECTION-ORDER.

(*See section 27*)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of *C. B.*, of , the wife of *A B.* .

SHEWETH,

That on the , day of , she was lawfully marrie l to *A. B*, at .

That she lived and cohabited with the said *A. B.*, for yea[illegible] , and had bac[illegible] [illegible]om [illegible] her earnings.

[illegible] e cause, deserted the applicant, and hath ever since remained separate and apart from her.

That since the desertion of her said husband, the applicant hath maintained herself by her own industry [*or* on her own property, *as the case may be*] and hath thereby and otherwise acquired certain property consisting of [*here state generally the nature of the property*]

Wherefore she prays an order for the protection of her earnings and property acquired since the said day of , from the said *A. B*, and from all creditors and persons claiming under him.

(Signed) *C. B.*

NO. 12—PETITION FOR ALIMONY PENDING THE SUIT.

(*See section 36.*)

In the (High) Court of

B. against *B.*

To the Hon'ble Mr. Justice [*or to the* Judge of]

The day of , 186 .

The petition of *C. B*, the lawful wife of *A. B.*

SHEWETH,

1. That the said *A. B.*, has for some years carried on the business of , at and from such business derives the nett annual income of from Rs. 4,000 to 5,000.

2. That the said *A. B.*, is possessed of plate, furniture, linen and other effects, at his said house aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs. 10,000,

3. That the said *A. B.*, is entitled, under the Will of his father, subject to the life-interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount.*

Your petitioner, therefore, prays that this (Hon'ble) Court will decree such sum or sums of money by way of alimony, pending the suit, as to this (Hon'ble) Court may seem meet.

(Signed) *C. B.*

Form of Verification : *see No. 1.*

No. 13—STATEMENT IN ANSWER TO No. 12.

In the High Court of

B. against *B.*

A. B. of , the above named respondent, in answer to the petition for alimony, pending the suit of *C. B*, says—

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years carried on the business of , at , and that, from such business, I have derived a nett annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the second paragraph of the said petition, I say that I am possessed of plate, furniture, linen and other chattels and effects at my said house aforesaid, of the value of Rs. 7,000, but, as I verily believe of no larger value. And I say that a portion of the said plate, furniture, and other chattels and effects of the value of Rs 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

3. I admit that I am entitled under the Will of my father, subject to the life-
lue of Rs 5,000, that is to say,
the death of my mother to a
to my father's execut,rs the
o his estate, and upon which
cent per annum

4 *And, in further answer to the said petition*, I say that I have no income whatever except that derived from my aforesaid business, that such income, since my said wife left me, which she did on the day of last, has been considerably diminished, and that such diminution is likely to continue. And I say that out of my said income, I have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors, and also to support myself and my two eldest children.

5. And, in further answer to the said petition, I say that, when my wife left my dwelling-house on the day of last, she took with her, and has ever since withheld and still withholds from me, plate, watches and other effects in the second paragraph of this my answer mentioned, of the value of, as I verily believe, Rs 800 at the least; and I also say that, within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. , and that she has ever since withheld and still withholds from me the same sum.

(Signed) *A. B.*

No 14—UNDERTAKING BY MINOR'S NEXT FRIEND TO BE ANSWERABLE. FOR RESPONDENT'S COSTS.

(*See Section 49*)

In the (High) Court of

I, the undersigned, *A. B.*, of . being the next friend of *C. D.*, who is a minor, and who is desirous of filing a petition in this
D of , hereby under-
D in such suit, and that, if the
in such manner as the Court shall
ll direct him [*or* her] to pay to the
said *D. D.*, I will forthwith pay the same to the proper officer of this Court.

Dated this day of 186 .

(Signed) *A. B.*

*The petitioner should state her husband's income as accurately as possible.

THE INDIAN AND COLONIAL DIVORCE JURISDICTION ACT, 1926.

[16 & 17 GEO. V. C. 40].

27th January, 1927.

An Act to confer on Courts in India and other parts of His Majesty's Dominions jurisdiction in the certain cases with respect to the dissolution of marriages, the parties whereto are domiciled in England and Scotland and to validate certain degrees granted for the dissolution of marriage of persons so domiciled.

[15th December, 1926.]

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same as follows :—

Divorce jurisdiction of High Courts in India where parties are domiciled in England or Scotland.

1. (1) Subject to the provisions of this Act, a High Court in India to which Part IX of the Government of India Act applies shall have jurisdiction to make a decree for the dissolution of a marriage, and as incidental thereto to make an order as to damages, alimony or maintenance, custody of children, and costs, where the parties to marriage are British subjects domiciled in England or Scotland, in any case where a Court in India would have such jurisdiction if the parties to the marriage were domiciled in India :

Provided that :—

(a) The grounds on which a decree for the dissolution of such a marriage may be granted by any such Court shall be those on which a decree might be granted by the High Court in England according to the law for the time being in force in England ; and

(b) any such Court in exercising such jurisdiction shall act and give relief on principles and rules as nearly as may be conformable to those on which the High Court in England for the time being acts and gives relief ; and

(c) no such Court shall grant any relief under this Act except in cases where the petitioner resides in India at the time of presenting the petition and the place where the parties to the marriage last resided together was in India, or make any decree of dissolution of marriage except where either the marriage was solemnized in India or the adultery or crime complained of was committed in India ; and

(d) any such Court may refuse to entertain a petition in such a case if the petitioner is unable to show that by reason of official duty, poverty or any other sufficient cause he or she is prevented from taking proceedings in the Court of the country in which he or she is domiciled and the Court shall so refuse if it is not satisfied that in the interests of justice it is desirable that suit should be determined in India.

(2) Any such order for alimony or maintenance or for custody of children shall have effect in India on making thereof, but save as aforesaid no such decree or order shall have any force or effect either in India or elsewhere unless and until registered in manner hereinafter provided.

(3) On production of a certificate purporting to be signed by the proper [illegible] the decree or order is made, [illegible] in England, be registered in the High Court in England ;

(b) if the parties to the marriage are domiciled in Scotland, be registered in the books of Council and Session ;

and upon such registration shall, as from the date of registration, have the same force and effect, and proceedings may be taken thereunder as if it had been a decree or order made on the date on which it was made by the High Court in India, by the High Court in England or the Court of Session in Scotland, as the case may be, and, in the case of an order, proceedings may be taken for the modification or discharge thereof as if it had been such an order as aforesaid :

Provided that :—

(i) the High Court in England or the Court of Session in Scotland shall not, unless the Court for special reasons sees fit so to do, entertain any application for the modification or discharge of any such order if and so long as the person on whose petition the decree for the dissolution of the marriage was pronounced is resident in India ; and

(ii) where an order for the payment of alimony has been so registered in the books of Council and Session, the Court of Session shall in addition to any other power have power in the event of any material change of circumstances to discharge or modify such order.

(4). Proceedings before a High Court in India in exercise of the jurisdiction conferred by the Act, shall be conducted in accordance with rules made by the Secretary of State in Council for India with the concurrence of the Lord Chancellor, and those rules shall provide—

(a) for petitions being heard before a Judge or one of two or more Judges of the Court nominated for the purpose by the Chief Justice of the Court with the approval of the Lord Chancellor ;

(*b*) for the decree or order made by such a judge being subject to appeal to two Judges of the Court similarly nominated without prejudice however to any right of ultimate appeal to His Majesty in Council,

(*c*) for prohibiting or restricting the exercising of the jurisdiction where proceedings for the dissolution of the marriage have also been instituted in England or Scotland ;

(*d*) for preventing in the case of a decree dissolving a marriage between parties domiciled in Scotland, the making of an order for the securing or a gross or annual sum of money ;

(*e*) for limiting cases in which applications for the modification or discharge of an order may be entertained by the Court to cases where at the time the application is made the person on whose petition the decree for the dissolution of the marriage was pronounced is resident in India ;

(*f*) for prescribing the officer of the Court empowered to give certificates under this Act, and the form of any such certificate ,

(*g*) for conferring such official as may be appointed for the purpose within the jurisdiction of each High Court the like right of showing cause why a decree should not be made absolute as is exercisable in England by the King's Proctor.

(5) The decision of a High Court in India, or on the appeal therefrom, as to the domicile of the parties to a marriage shall for the purposes of this Act be binding on all Courts in England, Scotland and India.

Notes.—Indian Courts under the Indian Divorce Act have no jurisdiction to dissolve marriage of parties who are not domiciled in India at the time of the petition. A. I. R. 1920 Lah. 555=10 P. L. R. 272=115 Ind. Cas. 851 ; see also A. I. R. 1931 [illegible] re the parties reside in India [illegible] egal under proviso (a) to s. 1, [illegible] ourt will dissolve the marriage [illegible] which the Divorce Court of England will grant such a decree according to s. 176 of the Supreme Court of Judicature (Consolidation) Act of 1925. A. I. R. 1928 Cal. 657=56 C. 89=322 C.

W. N. 742=115 Ind. Cas. 572; see also A. I. R. 1932 Cal. 149=35 C. W. N. 864=58 C. 1384; A. I. R. 1933 Lah. 255=145 Ind. Cas. 974.

Power to extend Act to the British possessions.

2. (1) His Majesty may, by order in Council, provide for applying the foregoing provisions of the Act, subject to the necessary modifications, to any part of His Majesty's Dominions other than a self-governing dominion, in like manner as they apply to India, and, in particular, any such order in Council may determine the Court by which the jurisdiction conferred by those provisions is to be exercised.

(2) For the purposes of this section "Self-governing Dominion" means the Dominion of Canada, the Commonwealth of Australia (which for this purpose shall be deemed to include Papua and Norfolk Island) the Dominion of New Zealand, the Union of South Africa, the Irish Free State, Newfoundland, and the Colony of Southern Rhodesia.

Validity of certain decrees.

3. Any decree granted under the Act of the Indian Legislature known as the Indian Divorce Act, 1869, and confirmed or made absolute under the provisions of that Act, for the dissolution of a marriage the parties to which were at the time of the commencement of the proceedings domiciled in England or in Scotland and any order made by the Court in relation to any such decree shall, if the proceedings were commenced before the passing of this Act, be as valid and be deemed always to have been as valid in all respects as though the parties to the marriage had been domiciled in India

Short title.

4. This Act may be cited as the Indian and Colonial Divorce Jurisdiction Act, 1926.

Rules under the Indian and Colonial Divorce Jurisdiction Act (1926)

[Published in *the Gazette of India*, dated the 26th August 1927, and in *the Calcutta Gazette* dated the 1st September 1927, Part 1 A, p. 197].

Rules under Section I (iv), *Indian and Colonial Divorce Jurisdiction Act, 1926.*

1. *Short title and commencement.*—(1) These rules may be called the Indian (Non-domiciled Parties) Divorce Rules, 1927. (2). They shall come into force on the 27th day of July, 1927.

2. *Appointment of Judges.*—(1) As soon as may be after the coming into force of these rules the Chief Justice of each of the High Courts referred to in sub-section (1) of section 1 of the Indian and Colonial Divorce Jurisdiction Act, 1926, hereinafter called "the Act" shall submit to the Lord Chancellor through the Secretary of State for India the names of such number of Judges of the Court (including if he thinks fit the name of the Chief Justice [illegible] necessary for the purpose of [illegible] any nomination so submitted being signified to the Chief Justice by the Secretary of State for India, the Chief Justice shall cause the *names so approved to be notified* in the local official Gazette (or, in the case of the High Court of Judicature at Calcutta, in [illegible] appointed to exercise jurisdiction under the [illegible] shall have been so notified shall thereupon [illegible] accordingly.

(2) At any time after the first nominations under these rules have been approved, the Chief Justice may propose the names of a further Judge or Judges to take the place of, or to exercise jurisdiction in addition to, the Judge or [illegible] Act; and when such further [illegible] aforesaid.

[illegible] d by a single Judge nominated and approved as hereinbefore provided, sitting without a jury, and, subject to

the provisions of the Indian Limitation Act, an appeal shall lie to a bench of two other Judges who have been similarly nominated and approved against any decree or order, which would be appealable if it had been passed in proceedings under the Indian Divorce Act, 1869, and shall be disposed of accordingly. Each such Bench shall be constituted by the Chief Justice as occasion may arise.

4. Nothing in these rules shall be deemed to prevent the exercise of any ultimate right of appeal to His Majesty in Council.

5. *Petition.*—All proceedings under the Act shall be commenced by filing a petition to which shall be attached a certified copy of the certificate of the marriage.

6 (1) In the body of a petition praying for the dissolution of a marriage shall be stated—

(*i*) the place and date of the marriage, and the name, status and domicile of the wife before the marriage;

(*ii*) the status of the husband and his domicile at the time of the marriage and at the time when the petition is presented, and his occupation and place or places of residence of the parties at the time of the institution of the suit;

(*iii*) the principal permanent addresses where the parties have cohabited, including the address where they last resided together in India,

(*iv*) whether there is living issue of the marriage, and, if so, the names and dates of birth or ages of such issue;

(*v*) whether there have been in the Divorce Division of the High Court of Justice in England or in the Court of Session in Scotland or in any Court in India any, and if so what previous proceedings with reference to the marriage, by or on behalf of either of the parties to the marriage, and the result of such proceedings;

(*vi*) The matrimonial offences charged set out in separate paragraphs, within the times and places of their alleged commission;

(*vii*) the claim for damages, if any;

(*viii*) the grounds on which the petitioner claims that in the interests of justice it is desirable that the suit should be determined in India.

(2) The petition shall conclude with a prayer setting out particulars of the relief claimed, including the amount of any claim for damages and any order for custody of children which is sought and shall be signed by the petitioner.

7. *Verification of petition.*—The statements contained in every petition under these rules shall be verified by the petitioner or some other competent person in manner required by the Code of Civil Procedure for the time being in force for the verification of plaints, and in cases where the petitioner is seeking of a decree of dissolution of marriage the verification shall include a declaration authenticated in like manner that no collusion or connivance exists between the petitioner and the other party to the marriage, and that neither the petitioner nor, within the knowledge of the petitioner, the other party to the marriage, has instituted proceedings which are still pending for the dissolution of the marriage in England or Scotland.

8. *Co respondents and interveners.*—In every petition presented by a husband for the dissolution of his marriage the petitioner shall make the alleged adulterers corespondents in the suit, unless the Court shall otherwise direct.

9. Where a husband is charged with adultery with a named person, a certified copy of the pleading containing such charge shall, unless the Court for good cause shown otherwise directs, be served upon the person with whom the adultery is alleged to have been committed, accompanied by a notice that such person is entitled, with the time therein specified, to apply for leave to intervene in the cause.

the provisions of the Indian Limitation Act, an appeal shall lie to a bench of two other Judges who have been similarly nominated and approved against any decree or order, which would be appealable if it had been passed in proceedings under the Indian Divorce Act, 1869, and shall be disposed of accordingly. Each such Bench shall be constituted by the Chief Justice as occasion may arise

4. Nothing in these rules shall be deemed to prevent the exercise of any ultimate right of appeal to His Majesty in Council.

5. *Petition.*—All proceedings under the Act shall be commenced by filing a petition to which shall be attached a certified copy of the certificate of the marriage.

6 (1) In the body of a petition praying for the dissolution of a marriage shall be stated—

(*i*) the place and date of the marriage, and the name, status and domicile of the wife before the marriage ;

(*ii*) the status of the husband and his domicile at the time of the marriage and at the time when the petition is presented, and his occupation and place or places of residence of the parties at the time of the institution of the suit ;

(*iii*) the principal permanent addresses where the parties have cohabited, including the address where they last resided together in India ;

(*iv*) whether there is living issue of the marriage, and, if so, the names and dates of birth or ages of such issue ;

(*v*) whether there have been in the Divorce Division of the High Court of Justice in England or in the Court of Session in Scotland or in any Court in India any, and if so what previous proceedings with reference to the marriage, by or on behalf of either of the parties to the marriage, and the result of such proceedings ;

(*vi*) The matrimonial offences charged set out in separate paragraphs, within the times and places of their alleged commission ;

(*vii*) the claim for damages, if any ;

(*viii*) the grounds on which the petitioner claims that in the interests of justice it is desirable that the suit should be determined in India.

(2) The petition shall conclude with a prayer setting out particulars of the relief claimed, including the amount of any claim for damages and any order for custody of children which is sought and shall be signed by the petitioner.

7. *Verification of petition.*—The statements contained in every petition under these rules shall be verified by the petitioner or some other competent person in manner required by the Code of [illegible] force for the verification of plaints, and in [illegible] of a decree of dissolution of marriage the v[illegible] authenticated in like manner that no collusion or connivance exists between the petitioner and the other party to the marriage, and that neither the petitioner nor, within the knowledge of the petitioner, the other party to the marriage, has instituted proceedings which are still pending for the dissolution of the marriage in England or Scotland.

8. *Co respondents and interveners.*—In every petition presented by a husband for the dissolution of his marriage the petitioner shall make the alleged adulterers corespondents in the suit, unless the Court shall otherwise direct.

9. Where a husband is charged with adultery with a named person, a certified copy of the pleading containing such charge shall, unless the Court for good cause shown otherwise directs, be served upon the person with whom the adultery is alleged to have been committed, accompanied by a [illegible] that such person is entitled, with the time therein specified, to [illegible] to intervene in the cause,

10. *Service of petitions and notices.*—Every petition or notice referred to in these rules shall be served on the party to be affected, thereby, either within or without British India, in the manner prescribed by the Court of Civil Procedure for the time being in force for the service of summonses :

Provided that unless the Court for good cause shown otherwise directs, service of all such petitions and notices shall be effected by delivery of the same to the party to be effected thereby, and the Court shall record that it is satisfied that service has been so effected.

11. *Answer and subsequent pleadings.*—A respondent or co-respondent or a woman to whom leave to intervene has been granted under Rule 9, may file in the Court an answer to the petition.

12. (1) Any answer which contains matter other than a simple denial of the facts stated in the petition shall be verified in respect of such matter by the respondent or co-respondent, as the case may be, in the manner required by those rules for the verification of petitions, and when the respondent is husband or wife of the petitioner the answer shall contain a declaration that there is not any collusion or connivance between the parties.

(2) Where the answer of a husband alleges adultery and prays relief, a certified copy thereof shall be served upon the alleged adulterer, together with a notice to appear in like manner as a petition. When in such case no relief is claimed, the alleged adulterer shall not be made as a co-respondent, but a certified copy of the answer shall be served upon him together with a notice as under Rule 9 that he is entitled within the time specified to apply for leave to intervene in the suit and upon such application he may be allowed to intervene, subject to such direction as shall then be given by the Court.

13. (1) If it appears to the Court that proceedings for the dissolution of the marriage have been instituted in England or Scotland before the date on which the petition was filed in India, the Court shall either dismiss the petition or stay further proceedings in England or Scotland have terminated, or until the Court shall otherwise direct.

(2) if it appears that such proceedings were instituted after the filing of the petition in India, the Court may proceed, subject to the provisions of the Act, with the trial of the suit.

14 *Showing cause against a decree nisi.*—The Governor General in Council in the case of the High Court of Judicature at Calcutta and the Local Government in other cases shall appoint a person to exercise within the jurisdiction of each of the High Courts referred to in section 1 of the Act the duties assigned to His Majesty's Proctor by sections 181 and 182 of the Supreme Court of Judicature (Consolidation) Act, 1925, and the name of the person so appointed shall be published in *the Gazette of India* or in the local official Gazette, as the case may be, by the designation of Proctor. Every Proctor so appointed shall, in the exercise of his functions act under instructions of the Advocate-General or other Chief Law Officer of the province.

15 (1) If any person during the progress of proceedings or before the decree *nisi* is made absolute gives information to the Proctor of any matter material to the due decision of the case, the Proctor may take such steps as he considers necessary or expedient.

(2) If in consequence of any such information or otherwise the Proctor suspects that any parties to the petition are or have been in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may after obtaining the leave of the Court intervene and produce evidence to prove the alleged collusion.

16. (1) When the Proctor desires to show cause against making absolute a decree *nisi* he shall enter an appearance in the suit in which such decree *nisi* has been pronounced and shall within a time to be fixed by the Court file his plea setting forth the grounds upon which he desires to show cause as aforesaid, and a certified copy of his plea shall be served upon the petitioner or person

in whose favour such decree has been pronounced or his advocate. On entering an appearance the Proctor shall be made a party to the proceedings, and shall be entitled to appear in person or by advocate.

(2) Where such plea alleges a petitioner's adultery with any named person a certified copy of the plea shall be served upon each such person, omitting such part thereof as contains any allegation in which the person so served is not named.

(3) All subsequent pleadings and proceedings in respect of such plea shall be filed and carried on in the same manner as in hereinbefore directed in respect of an original petition, except as hereinafter provided.

(4) If the charges contained in plea of the Proctor are not denied or if no answer to the plea of the Proctor is filed within the time limited or if an answer is filed and withdrawn or not proceeded with the Proctor may apply forthwith for the rescission of the decree *nisi* and dismissal of the petition.

17. Where the Proctor intervenes or shows cause against a decree *nisi* in any proceedings for divorce, the Court may make such order as to the payment by other parties to the proceedings of the costs incurred by him in so doing, or as to the payment by him of any costs incurred by any of the said parties by reason of his so doing, as may seem just.

18. Any person other than the Proctor wishing to show cause against making absolute a decree *nisi* shall, if the Court so permits, enter an appearance in the suit in which such decree *nisi* has been pronounced, and at the same time file affidavits setting forth the facts upon which he relies Certified copies of the affidavits shall be served upon the party or the advocate of the party in whose favour the decree *nisi* has been pronounced.

19. The party in the suit in whose favour the decree *nisi* has been pronounced may within a time to be fixed by the Court file affidavits in answer, and the person showing cause against the decree *nisi* being made absolute may within a further time to be so fixed file affidavits in reply.

20. *Decree absolute.*—No decree *nisi* for the dissolution of a marriage under the Act shall be made absolute till after the expiration of six months from the pronouncing thereof, if no appeal has been filed within that period, or if any appeal (including an appeal to His Majesty in Council) has been filed, until after the decision thereof.

21 (1) Application to make absolute a decree *nisi* shall be made to the Court by filing a petition setting forth that application is made for such decree absolute, which will thereupon be pronounced in open Court at a time appointed for that purpose. In support of such application it must be shown by affidavit filed with the said petition that no proceedings for the dissolution of the marriage have been instituted and are pending in England or Scotland, and that search has been made in the proper books at the Court up to within six days of the time appointed, and that at such time no person had intervened or obtained leave to intervene in the suit, and that no appearance has been entered nor any affidavits filed on behalf of any person wishing to show cause against the decree *nisi* being made absolute ; and in case leave to intervene had been obtained, or appearance entered or affidavits filed on behalf of such person, it must be shown by affidavits what proceedings, if any, have been taken thereon

(2) If more than twelve calendar months have elapsed since the date of the decree *nisi*, an affidavit by the petitioner, giving reasons for the delay, shall be filed.

22. *Alimony, maintenance and custody of children.*—Proceedings relating to alimony, maintenance, custody of children, and to the payment, application or settlement of damages assessed by the Court shall be conducted in accordance with the provisions of the Indian Divorce Act, 1869, and of the rules made thereunder :

Provided that when a decree is made for the dissolution of a marriage the parties to which are domiciled in Scotland, the Court shall not make an order for the securing of a gross or annual sum of money :

Provided further that no Court in India shall entertain an application for the modification or discharge of an order for alimony, maintenance or the custody of children, unless the person on whose petition the decree for the dissolution of the marriage was pronounced is at the time the application is made resident in India.

23. *Certifying Officer.*—A certificate referred to in sub-section (3) of section 1 of the Act shall be in the form set out in the schedule and shall be signed by a Registrar or Prothonotary of the High Courts to which the Act applies and sealed with the seal of the Court.

24. *Procedure generally.*—Subject to the provisions of these rules all proceedings under the Act between party and party shall be regulated by the Indian Divorce Act and the rules made thereunder.

25. The forms set forth in the Schedule to the Indian Divorce Act, with such variation as the circumstances of each case and these Rules may require, may be used for the respective purposes mentioned in the Schedule.

SCHEDULE.

(*See rule 25*)

I (A. B. Registrar / Prothonotary of the High Court of Judicature at.........hereby certify that the foregoing is a true copy of a decree / order made by the aforesaid High Court acting in exercise of the matrimonial jurisdiction conferred by the Indian and Colonial Divorce Jurisdiction Act, 1926, Suit No.........of......... / On App No....of......from judgment and decree in suit No...of in which the above named C. D. was petitioner and abovenamed E. F. was respondent and the above named G. H. was co-respondent / intervener

(Signed)

Registrar / Prothonotary

THE DOWER ACT.

ACT NO. XXIX OF 1839.

PASSED ON THE 16TH DECEMBER, 1839.

An Act for the Amendment for the Law relating to Dower.

Preamble.

1. WHEREAS it is expedient to extend the amendments in the English law of dower contained in the Statute 3rd and 4th William IV Chapter CV, to the territories of the East India Company, in cases which, but for the passing of this Act, would be governed by the English law of dower as it existed previously to the passing of the aforesaid Statute ;

Interpretation.

It is hereby enacted that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows ; that is to say, the word

"land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower), and to any share thereof.*

Notes.—The whole Act, except as to marriages contracted before first January 1866, was repealed by Act VIII of 1868. As to the local extent, see Laws Local Extent Act (XV of 1871) s. 3.

Widows to be entitled to dower out of equitable estates.

2. † When a husband shall die, beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law, and such interest whether wholly equitable or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal to an estate of inheritance in possession (other than an estate in joint-tenancy) then his widow shall be entitled in equity to dower out of the same land.

Notes.—A on his marriage with C, being equitable tenant-*in-tail* of certain lands, conveyed by deed of 1804, these lands to B, an indemnity against encumbrances on other lands purchased by B from A the legal fee subsequently descended upon A on the death of his father C became dowable out of the lands. *Lloyd* v.
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of
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who took as heir to the eldest The eldest son's wife shall have dower in these lands. *Bateman* v *Bateman*, 2 Vern 436

Seisin shall not be necessary to give title to dower.

3.† When a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same although her husband shall not have recovered possession thereof. Provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

No dower out of estates disposed of.

4.† No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his life time, or by his Will.

Notes.—A widow is not dowable of an equity of redemption. *Deston* v. *Saville*, 1 Bro. C. C 325; *Knight* v. *Framton*, 4 Beav. 10; *Flack* v. *Longwate*, 8 Beav 420.

Priority to partial estates, charges and specialty debts.

5.† All partial estates and interests, and all charges created by any disposition or Will of a husband, and all debts, incumbrances, contracts and engagements to which his land shall be subject or liable, shall be valid and effectual as against the right of his widow to dower.

Dower may be barred by a declaration in a deed.

6.† A widow shall not be entitled to dower out of any land of her husband, when in the deed by which such land was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land.

Or by a declaration in the husband's Will

7.† A widow shall not be entitled to dower out of any land of which her husband *shall die wholly or partially intestate* when by the Will of her husband, duly executed for the devise of free-hold estates, he shall declare

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*Certain words after this repealed by Act X of 1914 have been omitted.

† The words "And it is hereby further enacted that" in sections 2 to 10, 14 were repealed by the Repealing and Amending Act (12 of 1891).

his intention that she shall not be entitled to dower out of such land or out of any of his land.

8.* The right of a widow to dower shall be subject to any conditions, restrictions or directions which shall be declared by the Will of her husband duly executed as aforesaid.

Dower shall be subject to restrictions.

9.* Where a husband shall devise any land out of which his widow would be entitled to dower if the same were not so devised, or any estate or interest therein, to or for the benefit of his widow, such widow shall not be entitled to dower out of or in any land of her said husband, unless a contrary intention shall be declared by his Will.

Devise of real estate to the widow shall bar her dower.

10.* No gift or bequest made by any husband to or for the benefit of his widow of or out of his personal estate, or of or out of any of his land not liable to dower, shall defeat or prejudice her right to dower unless a contrary intention shall be declared by his Will:

Bequest of personal estate to the widow shall not bar her dower.

11. Provided always † that nothing in this Act contained shall prevent any Court of Equity from enforcing any covenant or agreement entered into by or on the part of any husband not to bar the right of his widow to dower out of his lands or any of them

Agreement not to bar dower may be enforced.

12.* Nothing in this Act contained shall interfere with any rule of enquity or of any Ecclesiastical Court by which legacies bequeathed to widows in satisfaction of dower are entitled to priority over other legacies.

Legacies in bar of dower still entitled to preference.

13. [*Certain dowers abolished*]—*Repealed by the Repealing and amending Act, 1891 (XII of 1891).*

14* This Act shall not extend to the dower of any widow who shall have been or shall be married on or before the first day of July one thousand eight hundred and forty, and shall not give to any Will, deed, contract, engagement or charge executed, entered into or created before the said first day of July one thousand eight hundred and forty the effect of defeating or prejudicing any right to dower.

Act not to take effect before the 1st July, 1840.

15.† This Act shall not be construed to affect any right of property in land otherwise than by modifying the law of dower in cases governed by the English law of dower, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice,

Saving of certain rights and jurisdiction.

THE INDIAN EASEMENTS ACT.

ACT V OF 1882.

RECEIVED THE G-G'S ASSENT ON THE 17TH FEBRUARY 1882.

An Act to define and amend the Law relating to Easements and Licenses.

WHEREAS it is expedient to define and amend the law relating to Easements and Licenses; It is hereby enacted as follows:—

Preamble.

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* Vide foot note † at page 651.
† Certain words repealed by Act 12 of 1891 have been omitted.

easement is the necessary consequence of the right of ownership of immovable property and as soon as mankind arrived at the determination that individuals were to be allowed exclusive ownership of property, the very next step was concurrence in the equitable principle that the good of the public lay in enjoying one's property so as not to disturb the enjoyment by the neighbour of his own property.

easement
General
system-
deciding

cases. Those rules were based mainly on English law as being just, equitable and at most free from local peculiarities.—*Vide Whitely Stoke's Anglo-Indian Codes*, vol. I. p. 879,

PRELIMINARY.

Short title. 1. This Act may be called The Indian Easements Act, 1882.

Local extent. It extends to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg:

Commencement. and it shall come into force on the first day of July, 1882.

Notes—Originally it was extended to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg By Act 7 of 1891, it has been extended to the territories respectively administered by the Governor of Bombay in Council and the Lieutenant Governor of the North Western Provinces and the Chief Commissioner of Oudh. See 18 B. 616 The principles underlying the Act are applicable to Berar though the Act is not in force there. A. I. R. 1926 Nag. 376= 2 N. L. R. 162= 94 Ind Cas. 923 Decisions of Calcutta High Court are not useful in other provinces A. I R. 1933 Oudh 69=8 Luck 278=9 O W. N. 986=140 Ind. Cas 889. The Act is not retrospective. A. I. R 1934 All 336=1934 A. L. J. 728. By Act VII of 1915 it has been extended to the Delhi Provinces The Indian Easements Act is not in force in Bengal. 30 C 503=7 C. W N. 649 Although the Indian Easements Act is not in force in the Punjab, the Punjab Courts when deciding cases in which principles

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English sources for their substantive law, on the principle that the English law on the subject is in accordance with justice, equity and good conscience" ; see also 8 C. W. N. 425 ; 7 Bom. L. R. 825=30 B 319.

Savings. 2. Nothing herein contained shall be deemed to affect any law not hereby expressly repealed, or to derogate from—

(*a*) any right of the Government to regulate the collection, retention, and distribution of the water of rivers and steams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or

distributed in or by any channel or other work constructed at the public expense for irrigation ;

(*b*) any customary or other right (not being a license) in or over immovable property which the Government, the public or any person may possess irrespective of other immovable property ; or

(*c*) any right acquired, or arising out of a relation created, before this Act comes into force.

Notes —This Act is not retrospective in its operation. 14 A. 785. In the case of

the special function and duty of the Government in India, 14 Ind. Cas. 261=1912 M. W. N. 493 ; see also 28 M. 539=15 M. L. J. 251 ; 1 I. A. 364=14 B. L. R. 209=
209 ; 1 M. L. J. 47 ; 16 M. 333.
power of distributing water for
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ith it. 26 Ind. Cas. 18 ; see also 45 Ind. Cas. 80=34 M. L. J. 425.

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the user of such extra waters as of right. A. I. R. 1926 Mad. 788=1926 M. W. N. 404.

Clause (b) —Before finding that a customary easement exists the Court must be satisfied of its reasonableness, certainty as to extent and application and length of time as suggest that the usage had become customary. 90 Ind. Cas. 976. Customary right is one enjoyed by certain portions of the public and strictly not easements. To make it valid it must be reasonable and certain No definite rule can be laid down as to the period of user necessary to make it valid. It is enough if the user is taken back as far as living memory. A. I R. 1923 Cal. 200=36 C L. J. 280=70 Ind. Cas. 263 ; see also 90 Ind. Cas. 976.

Clause (c).—Where the plaintiff has acquired the right and enjoyed it from time immemorial he is not prevented from exercising that right. 42 B. 288.

3.* All references in any Act or Regulation to sections 26 and 27 of the Indian Limitation Act, 1877, or to sections 27 and 28 of Act No. IX of 1871, shall, in the territories to which this Act extends, be read as made to sections 15 and 16 of this Act.

Construction of certain references to Act XV of 1877 and Act IX of 1871

Notes —*Section 3 repeals so far as the Central Provinces are concerned*, ss. 26 and 27 of the Limitation Act and the definition of easement contained in that Act. 14 N. L. R. 35=43 Ind. Cas. 962.

CHAPTER I.

OF EASEMENTS GENERALLY.

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

"Easement" defined.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner ; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Dominant and servient heritages and owners.

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth ; the

* Section 3 has been substituted for the original section by Act X of 1914

expression "beneficial enjoyment" includes also possible convenience, remote advantage and even a mere amenity ; and the expression "to do something" includes removal and appropriation by the dominant owner for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage, or anything growing or subsisting thereon

Illustrations.

(*a*) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement,

(*b*) A, as the owner of a certain house, has the right to go on his neighbour B's land and to take water for the purposes of his house-hold out of a spring therein. This is an easement

(*c*) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easemennt.

(*d*) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land the leaves which have fallen from the trees on E's land. These are easements.

(*e*) A [illegible] for the [illegible]

(*f*) A [illegible] it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

Easement—An easement may be defined to be a privilege without profit which the owner of one neighbou[illegible] several *tenements* by which [illegible] something of his own land, [illegible] *ment*, 8th Ed p 8 The [illegible] thus distinguished :—(1) It is an incorporeal right, (2) it is imposed upon a corporeal property and (3) it confers no right to participation in the profits arising from it *Ibid.* These rights can well be called "rights of accommodation as distinguished from those which are *directly* profitable." "A right of way, or right of passage for water, *where it does not create an interest in the land, is an incorporeal right, and* stands upon the same-footing with other incorporeal rights." *Heldlin* v. *Shippeam*, 1826 5 B. & C. 221. Artificial structure such as flat masonry roofs of shops are land within the meaning of that expression as used in section 4 of the Act and easements can be acquired over them. 45 Ind. Cas. 585 A right to open and shut the windows of a person's house is an easement within the meaning of this section as it is a right, which the owner of the house has, as such for the beneficial enjoyment of his house to do something, *i. e.*, to swing the shutters upon certain other lands not his own and such a right can be acquired as an easement by [illegible] L. R. 403=94 Ind. Cas. 673=A. I. R 1926 Bom 328 The right of passage that the public have over a road does not fall within the definition of this section inasmuch as it is not dependent on the ownership of any landed property 48 A. 560=95 Ind Cas. 1030=24 A L J 682=A. I R (1926) All. 538 A right of way can be claimed by a person for a municipal sweeper if he can substantiate that the passage has been used by the municipal sweeper for the statutory period as a matter of right. 28 Bom. L. R. 601=95 Ind. Cas 170=A. I. R. 1926 Bom. 282. A person can claim in a suit certain property as his own or in the alternative that he has got a right of easement over the same. 41 C. L. J. 379=87 Ind. Cas. 19=A. I. R. 1925 Cal. 788. Easement of light and air through holes in joint wall dividing two tenements can be claimed. A I. R. 1933 Lah. 28=33 P. L. R. 930=142 Ind. Cas. 764. Right of *lagan* attached to ghat is easement. 129 Ind. Cas. 717=1931 A. L. J. 267=A. I. R. 1931 All. 207. Right which involves the total exclusion

distributed in or by any channel or other work constructed at the public expense for irrigation ;

(*b*) any customary or other right (not being a license) in or over immovable property which the Government, the public or any person may possess irrespective of other immovable property ; or

(*c*) any right acquired, or arising out of a relation created, before this Act comes into force.

Notes—This Act is not retrospective in its operation. 14 A. 785. In the case of

M. W. N. 493 ; see also 28 M. 539=15 M. L. J. 251 ; 1 I. A 364=14 B. L. R. 209=22 W. R. 279 ; 5 M. H. C R. 6 ; 28 B. 105 ; 7 B. 209 ; 1 M. L. J. 47 ; 16 M. 333. Where Government in the exercise of its general power of distributing water for irrigation in ryotwari villages limits the supply of water to what is reasonably necessary, no one else has any right to interfere with it. 26 Ind. Cas. 18 ; see also 45 Ind. Cas. 80=34 M. L J. 425.

Clause (a).—Government is bound to supply water to wet fields, but the ryots cannot claim as against Government any right to take water to their fields by any particular channel. A. I R. 1930 Mad. 621=125 Ind. Cas. 74 Mere use of extra water by a ryot for a long time would not entitle him to insist on such supply unless the user of such extra waters as of right. A. I. R. 1926 Mad. 788=1926 M. W. N. 404.

Clause (b)—Before findin
satisfied of its reasonableness,
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4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

Dominant and servient heritages and owners.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner ; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth ; the

* Section 3 has been substituted for the original section by Act X of 1914

expression "beneficial enjoyment" includes also possible convenience, remote advantage and even a mere amenity ; and the expression "to do something" includes removal and appropriation by the dominant owner for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage, or anything growing or subsisting thereon

Illustrations.

(*a*) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement,

(*b*) A, as the owner of a certain house, has the right to go on his neighbour B's land and to take water for the purposes of his house-hold out of a spring therein. This is an easement

(*c*) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easemennt.

(*d*) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land the leaves which have fallen from the trees on E's land. These are easements.

(*e*) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and repassing. This right is not an easement

(*f*) A is bound to cleanse a water-course running through his land, and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

Easement—An easement may be defined to be a privilege without profit which the owner of one neighbouring *tenement* hath of another, existing in respect of their several *tenements* by which the servient owner is obliged "to suffer or not to do" something of his own land, for the advantage of the dominant owner. *Gale on Easement*, 8th Ed p 8. The essential qualities of [illegible] . thus distinguished .—(1) It is an incorporeal rig [illegible] property and (3) it confers no right to parti[illegible] *Ibid.* These rights can well be called "right[illegible] distinguished from those which are *directly* profitable." "A right of way, or right of passage for water, where it does not create an interest in the land, is an incorporeal right, and stands upon the same-footing with other incorporeal rights." *Heldlin v. Shippeam*, 1826 5 B. & C. 221. Artificial structure such as flat masonry roofs of shops are land within the meaning of that expression as used in section 4 of the Act and easements can be acquired over them 45 Ind. Cas. 585. A right to open and shut the windows of a person's house is an easement within the meaning of this section as it is a right, which the owner of the house has, as such for the beneficial enjoyment of his house to do something, *i. e*, to swing the shutters upon certain other lands not his own and such a right can be acquired as an easement by prescription. 7 L W. 332=45 Ind. Cas 435. The right of a person to go upon the neighbour's land and raise a scaffolding upon the neighbour's land for the propose of plastering the wall of his prem ses is an easement within s. 4 of the Act. 28 Bom. L R 403=94 Ind. Cas. 673=A I R 1926 Bom. 328. The right of passage that the public have over a road does not fall within the definition of this section inasmuch as it is not dependent on the ownership of any landed property 48 A 560=95 Ind. Cas. 1030=24 A L. J 682=A. I R. (1926) All. 538 A right of way can be claimed by a person for a municipal sweeper if he can substantiate that the passage has been used by the municipal sweeper for the statutory period as a matter of right 28 Bom. L. R. 601=95 Ind. Cas. 170=A. I. R. 1926 Bom. 282. A person can claim in a suit certain property as his own or in the alternative that he has got a right of easement over the same. 41 C. L. J. 270=[illegible] Cas [illegible] A. I. R 1925 Cal. 788. Easement of [illegible] dividing two tenements can be claimed. [illegible] Ind. Cas. 764. Right of *lagan* attached t[illegible] 1931 A. L. J. 267=A. I. R. 1931 All. 207. [illegible]

of the owner of the soil from its enjoyment, cannot be claimed as an easement. A. I. R. 1931 Sind 1=130 Ind. Cas. 546. It is doubtful if the right to allow sweepers to pass is an easement. A. I. R. 1929 Cal. 350=33 C. W. N. 189. Essemeat implies that the tenement belongs to another person. A. I. R. 1930 Sind 34=120 Ind. Cas 497. Question of easement is a mixed question of law and fact. A. I. R. 1930 ier of a house can sue for infringement of A. I. R. 1930 Sind. 152=123 Ind. Cas. 230 question of easement would arise. A. I. R. 1924 All. 50=21 A. L. J. 436=74 Ind. Cas. 481. User under a claim of ownership when negotient cannot operate to found a right of easement. A. I R. 1926 Mad. 625=92 Ind. Cas. 465. Residents of private houses situate on a public lane cannot sue for encroachment on that lane. A. I. R. 1929 All. 504=118 Ind. Cas. 520. Where two plots are held exclusively by two co-sharers severally holder of one plot cannot claim easement over the other plot. A. I. R. 1925 Pat. 492=3 Pat. L. R. 81=87 Ind. Cas. 736. Land for use as burial ground may be acquired through purchase or dedication but not as an easement by prescription A. I. R. 1921 Cal. 569=34 C. L. J. 319=66 Ind. Cas. 640. Private rights of way if not appurtenant to a dominant tenement, like public right of way are not easements. They are rights in gross and can be enforced as such. 59 Ind. Cas. 319. Right to hunt in a jungle and to appropriate the game is right to profit a *pendre* in gross 2 P. L J. 323=2 P. L. W. 282=39 Ind. Cas. 868. Right to incident to the ownerhip of land in the nature of easement but not easement as such, is a natural right and is distinct from easement. 57 Ind. Cas. 504 Right of passage by villager through another's field to Government forest is not easement by customary right. A. I. R. 1933 Nag. 74=29 N. L. R. 85=142 Ind. Cas. 153. A right in gross or profit a *pendre* can be acquired by custom. A. I. R. 1934 Cal. 461=61 C. 45 An owner as well as occupier can acquire a right of easement. 67 M. L. J. 262=A. I. R. 1934 Mad. 575=1934 M. W. N. 1042=40 L. W. 514. No easement is created by allowing villagers to enjoy *shamilat* personally. A. I. R. 1934 Pesh 96=152 Ind. Cas. 141. Prescriptive rights as an easement to use land as burial ground cannot be acquired. A. I. R. 1935 Cal. 357. One of the essential features of a right of easement is that the person of inherence must be owner or occupier of certain land for the beneficial enjoyment of which the right is claimed. A. I. R. 1935 All 481.

The lessee of a person in lawful possession of a house may maintain an action if the right of privacy of the house of which he is in possession is interfered with. 3 A. L. J 670=A. W. N. 1906, 283=29 A 64. A right to go on to a neighbour's land to gather the fruits that fall therefrom a portion of a tree alleged to belong to the plaintiff is not an easement. 43 M L. J. 152=68 Ind. Cas. 968; (1895) A. C. 1.

Considered with regard to the servient tenement, an easement is but a charge or obligation, curtailing the ordinary rights of property with regard to dominant tenement; it is a right accessorial to these ordinary rights constituting in both cases a new quality impressed upon the respective heritages. *Gale on Easement*, p. 9. An easement can only be claimed in relation to a property. *Ibid.*

Continuous and discontinuous, apparent and non-apparent easements.

5. Easements are either continuous or discontinuous, apparent or non apparent.

A continuous easement is one whose enjoyment is, or may be continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

e the existence of which is shown by some inspection by a competent person, would

A non apparent easement is one that has no such sign.

Illustrations.

ne windows without

is a discontinuous easements,

(*c*) Rights annexed to A's land to lead water thither across B's land by an aqueduct, and to draw off water thence by a drain. The drain would be discovered *upon careful inspection by a person conversant with such matters* These are apparent easements.

(*d*) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

Notes.—"*Easements may be divided into continuous and discontinuous,* and into apparent and non-apparent. Continuous servitudes are those of which the enjoyment is or may be continual, without the necessity of any actual interference by man, as a water-spout, or right to light and air. Discontinuous servitudes are those the enjoyment of which can only be had by the interference of man, rights of way, or a right to draw water Apparent servitudes are those the existence of which is shown by external works, as a door, a
are those which have external
in a particular land, or to build ...
Pheysey v *Vicary*, 16 M. & W 484 A drain is a continuous easement. 7 Ind Cas. 575=8 M L T. 292. Artificial water courses or openings for taking water are apparent and continuous easements A I. R. 1930 Pat 7=124 Ind. Cas. 385. Flow of water through ... ient. Flow of rain water through it is ... of a continuous easement. A. I. R. 19 ... 896. Right to use staircase not being ... I. R 1929 Lah. 848=117 Ind. Cas. 381.

Easement for limited time or on condition

6. An easement may be permanent or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easements restrictive of certain rights.

7. *Easements are restrictions of* one or other of the following rights, (namely) :—

Exclusive right to enjoy

(*a*) The exclusive right of every owner of immovable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

Rights to advantages arising from situation

(*b*) The right of every owner of immovable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the rights above referred to

(*a*) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force

(*b*) *The right of every owner of land that the air passing thereto shall not be* unreasonably polluted by other persons.

(*c*) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(*d*) The right of every owner of land to so much light and air as pass vertically thereto.

(*e*) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and the adjacent soil of another person.

... dition when it is not excavated and not
... cent and the adjacent soil" mentioned
... s in its natural condition would support
... within his own limits, the water which

naturally passes or percolates by, over or through his land, shall not, before so passing or percolating, be unreasonably polluted by other persons.

(*g*) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(*h*) The right of every owner o
passes by, through, or over his land
other persons to flow within suc
material alteration in quantity, direction, force, or temperature ; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature

hat water naturally rising in, or
nels, shall be allowed by the

(*j*) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep ; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

Explanation.—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course.

Notes.—This right conferred by an easement attaches upon the soil of servient tenement ; the utmost extent of the obligation imposed upon the owner being not to alter the state of it so as to interfere with the enjoyment of the easement by the dominant. This obligation upon him is in fact negative—to suffer or not to do—ceasing altogether upon his ceasing to be the owner of the servient heritage ; and
its transfer, to each successive proprietor.

s whether the owner use more than a reasonable quantity, and the user is not as a rule to be deemed unreasonable unless there is material diminution of water so as to
M. W .N. 481=24 Ind Cas. 685. The
air and water, and of all wild anim
appropriation. It is a right incidental t
or the water lies, just as much as is the right to take the silt deposited by rivers or the lava thrown up by a volcano or the rain or snow falling from the sky. 64 Ind. Cas. 346=3 P. L. T. 53.

Variety of easements.—The number or modifications of rights of this kind may be infinite both in their extent, and mode of enjoyment as the convenience of man. In using his property requires. "To descend now" says *Lord Stair*, "to the kinds of servitudes, there may be as many as there are ways whereby the liberty of a house or tenement may be restricted in favour of another tenement ; for liberty and servitude are contraries, and the abatement of the one is the being or enlarging of other." *Cited in Gale on Easement*, p 22 But no incidents of a novel kind can be devised and attached to property at the fancy or caprice of any owner. *Per*
also *Hill* v.

dless of the
ld otherwise
23 Cal. 256.
wn land the
as he may
f the riparian owner does
It belongs to the proprietor
the soil belonging to him
ural advantages belonging
to the land of which he is the owner. 59 Ind. Cas. 364. An easement exists for the benefit of the dominant tenant alone and the servient owner cannot insist on its continuance by the dominant owner or claim damages for abandonment. 65 Ind. Cas. 84. Every land owner has a natural right to collect and retain upon his own land the surface water not flowing in a defined channel and put it to such

use as he may desire. He may also allow it to flow away in the usual course of nature upon the lower land of his neighbour and cannot be bound to prevent it, from so doing. 65 Ind. Cas. 84= 1922 Pat 805=44 P. L R Pat. 105.

The word 'owner' in this section cannot be interpreted as meaning necessarily absolute owner. 42 M. 567=37 M. L J 28=26 M. L. T. 48=10 L. W. 87=(1919) M. W. N. 305=50 Ind. Cas 291. Ryot of wet
Government with sufficient water for irrigating
Rights which an upper owner has to allow rain
adjacent tenement is a natural right under the Act. A. I. R. 1930 Mad. 676=1930 M. W. N. 133=125 Ind. Cas 530. No raparian owner is entitled to obstruct a public river. 21 Cr L. J. 55=54 Ind. Cas 407=6 O L. J 616 ; see also 19 A. L. J. 736=43 A 688=63 Ind. Cas. 980 Riparian owners should be liberally allowed to use water for irrigation so long as it does not interfere with similar rights of lower riparian owners 34 M L J 223=43 Ind Cas 113=7 L W. 1 ; see also 41 Ind. Cas. 47 ; 41 Ind Cas. 24 ; 3 Pat L J. 51=43 Ind. Cas. 235. Owner of land on lower level can not prevent water flowing over into land in natural course from higher adjacent land. A I. R 1928 Lah. 717=29 P. L R. 440=108 Ind Cas. 728. Right to water flowing in artificial water-courses is an easement and must be acquired by grant or prescription. A. I R 1923 Lah 257=73 Ind. Cas. 489 Owner of upper lands can discharge surplus rain water as also irregation water brought on his lands for agricultural operations into lower lands by opening vents in his bund provided no damage is caused to the lower land. A I. R 1929 Mad. 357=52 M. 426=56 M. L. J. 311=118 Ind. Cas. 287; see also A. I. R. 1928 Nag. 184=24 N. L. R. 122 ; A. I. R. 1926 Mad. 449=49 M. 441=50 M L J. 377=1926 M W. N. 370=94 Ind. Cas 677 (F. B). Where flood water was accumulated on higher land through fault of owner lower land owner can prevent his flow into his land though thereby the natural
Rang 86=1 Rang 729 There is no right of
923 Cal. 256=72 Ind. Cas. 576. Proprietors of
cannot enjoy their water without grant or prescription. A. I R 1933 Mad 10=36 M. L. W. 688 ; see also 54 M. 793=61 M. L. J. 563=33 M L. W 681. Principles of English law relating to under ground streams are not to be applied to India, where conditions are different 54 M 793=61 M. L. J. 563=A. I R 1931 Mad. 284. As between owners of land no one has right to property in water flowing under ground in undefined channels by percolation *Ibid.* Where surplus water from Government land are stored in small ponds or natural depressions and used for irregation, Government is entitled to levy charge for use of such water and no easement to use such water can be acquired. A. I. R. 1933 Mad. 646=56 M. 696=65 M. L. J. 179=1933 M. W. N 517.

Illustration(*e*)—This illustration applies where the land is in its natural condition and not where a building is put upon it. A I R. 1929 All 885=1930 P. L. J. 34 =118 Ind. Cas. 715.

Illustration(*h*)—Riparian owners have a natural right to use the water of a natural streamlet for the the purpose of irrigation so long as that used is reasonable. 44 Ind. Cas. 19 ; 51 Ind Cas. 949

Illustration(*i*).—The owner of a higher land is entitled to let the water run off into the lower land, by whatever means nature intended, and this right is recognised by this clause. 2 Rang 450=1925 Rang 58=3 Bur. L J. 217. The right of every owner of land lying on a higher level to flow water naturally falling on such land and not passing in defined channels to the land lying on the lower level is a right *ex juri nature* and not a right founded on prescription. 12 A. L. J. 685=24 Ind. Cas. 91 ; 41 Ind. Cas. 863 ; 84 Ind. Cas 924 ; 22 C. W. N. 656=41 Ind. Cas.
tilise water for irrigaiton
with easement acquired by lower proprietors. 44 Ind. Cas 19 ; see also 43 Ind Cas. 113 ; 52 Ind. Cas. 276 ; 7 Bom. L. R. 26 ; 5 B. 357 ; 1934 M. W. N. 1099=A. I. R. 1534 Mad. 583=67 M L. J. 373

CHAPTER II.

THE IMPOSITION, ACQUISITION, AND TRANSFER OF EASEMENTS.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer interest in the heritage on which the liability to be imposed.

Who may impose easements.

Illustrations.

(*a*) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(*b*) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(*c*) A, B and C are co owners of certain land. A cannot without the consent of B and C, impose an easement on the land or on any part thereof.

(*d*) A and B are lessees of the same lessor. A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B a right of way terminable with A's lease.

Notes—An easement right can be conferred by the owner of the servient tenement for caste consideration. 27 Ind. Cas. 920. Under the Land Clause Consolidation Act, 1845 (8 & 9 Vict. c 18) a limited owner had no power to grant an easement. But under the Settled Land Act, 1882. 43 & 46 Vict. c. 381, a limited owner was given such a power. As to the limits of this power *vide*, *Sutherland* v. *Sutherland*, (1893) 3 Ch. 169; *Re Pearson's Well*, (1900) 83 L. T. 626; *Pease* v. v. *Courbney* (1904) 2 Ch, 503 A tenant can acquire an easement against property held by another tenant A I R 1929 All 862=118 Ind. Cas. 225; see also 115 Ind. Cas. 884 Where a Zemindar has been using the water of a channel for irrigating his lands from the time of the permanent settlement, a lost grant may be presumed. 46 I. A 302=24 C. W. N. 446=22 Bom. L. R 498=54 Ind. Cas. 154 (P. C); see also 50 Ind Cas. 933. A right of way can be created by verbal agreement. 9 Bur. L. T. 322=9 L. B. R 24=34 Ind Cas. 95.

9. Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lesson the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Servient owners.

Illustrations.

(a) A has, in respect of his mill a right to the uninterrupted flow thereto, B's stream. B may grant to C the right to om noon to sunset: provided that A's supply is

over B's land. B may grant .o feed his cattle on the grass is not thereby obstructed.

Notes.—As it is the duty of the owner of the dominant tenement not to do any act which imposes an additional burthen upon the owner of the serveint tenement so the latter must not do an act which interferes with the exercise of the right already acquired or those secondary easements, which are requisite for its full and free enjoyment. If his wall be liable to an easement of support to a neighbouring house, he must not (except for the purpose of necessary repair) pull down, or incapable of rendering the requisite Cr. & J. 20], he must not plough up a end of it, so as to prevent the grantee Jur. N. S. 711] or drive stakes to obs- ugh the stream be incapable of use at the want of cleansing (*Bower* v. *Hell*, 1 Bing. N. C. 555)" *Gale on Easement*, p 598.

10. Subject to the provisions of section 8, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement

Lessor and mortgagor.

on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Explanation.—A security is insufficient within the meaning of this section, unless the value of the mortgaged property exceeds by one third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Notes.—A mortgagor or a lessor cannot grant a right of easement in derogation of the rights of the lessee or mortgagee. Subject to the provisions of section 8 and of this section an easement can be created by an instrument under seal. *North British Railway Co.* v. *Park Yard Co. Ltd*, (1898) A. C. 643 ; see also *Southerland* v. *Southerland*, 1893, 3 Ch 169 ; *Re Pearson's Will* (1900) 83 L. T. 626 ; *Pase* v. *Courtnay*, 1904, 2 Ch. 503 ; 82 P. R 1902 ; A. I. R. 1934 Lah 199.

Lessee.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

Notes.—*Vide* notes under section 10.

Who may acquire easements.

12. An easement may be acquired by the owner of the immovable property for the beneficial enjoyment of which the right is created, or on his behalf, by any person in possession of the same.

One of two or more co-owners of immovable property, may, as such with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immovable property can acquire, for the beneficial enjoyment of other immovable property of his own, an easement in or over the property comprised in his lease.

Notes—In *Rangeley* v. *Midland Rail Co*, (1868) L. R. 3 Ch 610 *Lord Cairns* observed : "There can be no easement, properly so called, unless there be both a servient and a dominant tenement An easement must be connected with a dominant tenement." The point decided by *Ackroyd* v. *Smith*, (1850) 10 C. B. 164, is that a right of way cannot be so granted as to pass to the successive owners of land, as such, in cases where the way is not connected in some manner with the enjoyment of the land, to which it is attempted to make it appertinent. Although a a tenement cannot acquire a prescriptive right of easement in the land belonging to his lessor, he may claim a right of easement based on immemorial user. 36 C L. J. 161=50 C. 355 , 23 C. 369 ; 14 A. 185 ; 38 M L. J 28 Claimant of easement need not be owner of property. 151 Ind Cas 141=A. I. R 1934 All. 527 The lessor is entitled to the right of easement acquired by his lessee after his lease. 19 C. W N. 1121=31 Ind. Cas. 549 ; 45 Ind Cas 28. Tenant can claim right of easement based on immemorial user though not by prescription. A I R. 1930 Pat 7=124 Ind. Cas. 385. Lambardor cannot acquire easement over manure collected by the non-agriculturists A. I. R 1928 Oudh 257=5 O W. N 296. Tenant of land having permanent tenancy cannot acquire an easement by prescription in other lands of his lessor. 38 M. L J 28=11 L. W. 34=26 M. L T 439=54 Ind Cas. 943. Tenants in the dominant tenement enjoying an easement as of right acquire it for the landlord. 19 C W. N 1211.

Easements of necessity and *quasi*-easements.

13. Where one person transfers or bequeathes immovable property to another,—

(*a*) if an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement ; or,

(*b*) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement ,

(c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immovable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement ; or,

(d) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or,

(f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partitions took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (a), (c) and (e) are called easements of necessity.

Where immovable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(a) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold

(b) A, the owner of two fields, sells one to B and retains the other. The field [illegible] only, and is [illegible] to a right of [illegible] retains. The [illegible] ying the house [illegible] and A cannot afterwards obstruct it by building on his land.

(d) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(e) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f) A is the owner [illegible] overlooking the land. [illegible] reserving any easement. [illegible] house as it was enjoy[illegible] cannot build on the land so as to obstruct such light.

(g) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(h) A, the owner of two adjoining houses, Y and Z, sells Y to B and retains Z B is entitled to the benefits of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i) A, the owner of two adjoining buildings, sells one to B retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j) A, the owner of two adjoining buildings sells one to B and the other to C. C is entitled to lateral support from B's building and B is entitled to lateral snpport fror C.

uilding a house thereon. B is entitled to from A's land as is necessary for the safety of the house.

(l) Under the Land Acquisition Act acquires a portion of B's land for the is entitled to such amount of lateral su for the safety of the siding.

(m) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room

(n) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds

Notes—The implication of the grant of an easement may arise in two ways: 1st upon the severance of a heritage by its owner into two or more parts; 2ndly by prescription. *Gale* will be implied: 1s fact been used by an easement; and the severed portion easements of necessity. This kind of easement is absolutely necessary for the use of the dominant tenement. 38 A. 467=9 Ind. Cas 628; 17 A L. J 672=50 Ind Cas. 646; 48 Ind. Cas. 670; 50 Ind Cas. 756; 60 Ind. Cas. 504. Without such an easement the use of the dominant tenement is impossible. 60 Ind. Cas. 504; (1923) Oudh 250; 17 Ind. Cas. 966; 16 C. L. J. 417; 90 Ind Cas. 900; 46 Ind Cas. 327; 3 C. W. N. 409; 14 B. 452; A. I. R 1934 All 802. In order to found a claim to an easement of necessity, unity of ownership of the dominant and servient tenements at sometime is essential, as in the absence of such unity no grant can be implied. *Gale on Easements*, p 171; see also 46 Ind Cas. 327; 26 C 510; 14 B 452. In *Union Lightage Co* v. *London Graving Dock Co*, (1902) 2 Ch 557, 573 *Starling L. J.* said: "An easement of necessity is one without which the property retained upon a severance can not be used at all; not one which is merely necessary to the reasonable enjoyment of that property." See also *Ray* v. *Hazeldine*, (1904) 2 Ch. 17; *Tit Chamargh* v. *Ryston Water Co Ltd.* (1900) 81 L. T. 673; 38 A. 467=9 Ind. Cas. 628; 17 A. L. J. 672; 72 Ind. Cas. 199; 50 Ind. Cas 646; 50 Ind Cas 756 Ind Cas 670. *Morris* v *Eddington*, 3 Taunt 28; *Bailey* v. *Great Western Railway*, (1878) L. R. 26 Ch. D. 453. The inference of law arises equally whether the easement is incident to a grant or a reservation *Pinnington* v. *Galland* 9 Ex 1.; *Wheeldon* v. *Burrows*, (1879) L. R. 12 Ch. D. 57; *Midland Railway* v. *Miles*, L. R. 33 Ch. D. 614.

Where the owner of an entire tract of land or of two or more adjoining parcels employ a part thereof so that one derives from the other a benefit or advantage of continuous and apparent nature, and sells the one in favour of which such continuous and apparent *quasi*-easement exists, the easement being necessary to the reasonable enjoyment of the property granted, will pass to the grantee by implication. 72 Ind. Cas. 576=1923 Cal 256; *Ewert* v *Cockrane*, 4 Mac. H L. 117; *Wheeldon* v. *Burrows*, 12 Ch D 31; *Gayley* v. *O W Ry & Co* 26 Ch. D. 434; *Crown* v *Alafaster*, 37 Ch. D. 470; *Swan* v. *Cotton*, (1916) 2 Ch 459. An ease- nts. igh the iter ing R. an easement of necessity. 22 Bom L. R. 415=57 Ind. Cas 143 Where the easement was not in existence at the time of severance, an easement under this section cannot be created. 5 Ind. Cas. 740=33 M. 207 The owner of the dominant heritage

* Superseded by Act 1 of 1894.

(*c*) if an easement in the subject of the transfer or bequest is necessary for enjoying other immovable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement ; or,

(*d*) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or,

(*f*) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partitions took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (*a*), (*c*) and (*e*) are called easements of necessity.

Where immovable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(*a*) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(*b*) A, the owner of two fields, sells one to B and retains the other. The field [illegible] only, and is [illegible] to a right of [illegible] retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(*d*) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(*e*) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(*f*) A is the owner [illegible] overlooking the land. [illegible] reserving any easement. [illegible] house as it was enjoy[illegible] cannot build on the land so as to obstruct such light.

(*g*) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(*h*) A, the owner of two adjoining houses, Y and Z, sells Y to B and retains Z. B is entitled to the benefits of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(*i*) A, the owner of two adjoining buildings, sells one to B retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(*j*) A, the owner of two adjoining buildings sells one to B and the other to C. C is entitled to lateral support from B's building and B is entitled to lateral snpport from C's building.

(*k*) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(*l*) Under the Land Acquisition Act, 1870,* a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(*m*) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(*n*) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

Notes —The implication of the grant of an easement may arise in two ways : 1st upon the severance of a heritage by its owner into two or more parts ; 2ndly by prescription. *Gale*
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Where the owner of an entire tract of land or of two or more adjoining parcels employ a part thereof so that one derives from the other a benefit or advantage of continuous and apparent nature, and sells the one in favour of which such continuous and apparent *quasi*-easement exists, the easement being necessary to the reasonable enjoyment of the property granted, will pass to the grantee by implication. 72 Ind. Cas. 576=1923 Cal 256 ; *Ewert* v. *Cockrane*, 4 Mac. H. L. 117 ; *Wheeldon* v, *Burrows*, 12 Ch D 31 ; *Gayley* v *O. W. Ry. & Co* 26 Ch. D. 434 ; *Crown* v. *Alafaster*, 37 Ch. D. 470 ; *Swan* v. *Cotton*, (1916) 2 Ch. 459 An easement of necessity can not arise in any other way than on severance of tenements. 46 Ind Cas. 327. The mere fact that plaintiff had acquired another tenement through which he could pass water did not deprive the easements in question of the character of easement of necessity. 10 P. R. 1919=53 Ind Cas. 584. Right to enter upon neighbour's land and erect a scaffolding there for the purpose of plastering the walls, whether an easement of necessity, 94 Ind Cas. 673=28 Bom. L. R. 403=A. I. R. (1926) Bom 328. The right to take water from another's well is not an easement of necessity. 22 Bom L. R. 415=57 Ind. Cas. 143. Where the easement was not in existence at the time of severance, an easement under this section cannot be created. 5 Ind. Cas. 740=33 M. 207. The owner of the dominant heritage

* Superseded by Act 1 of 1894.

cannot increase the easement by altering the dominant heritage. 24 B. 188=1 Bom L. R. 653; see also 1 Bom. L. R. 37=23 B. 595. Where there are other means of access, there can be no easement of necessity. 9 Ind. Cas. 764=9 M. L. T. 274; 9 Ind. Cas. 628=8 A. L. J. 280. Where the necessity for an easement of necessity terminates, the easement also terminates .
is no continuous easement. A. I. R. 1924 Lah
of necessity only arises when there is no otl
the land. 1930 M. W. N. 120=127 Ind. Cas. 6
Owner of lower plot has to allow any water
land through apperture in the wall built by owners of both the plots. A. I. R. 1930

34 Bom. L. R. 1150=A. I. R. 1932 Bom. 574. A right of way of necessity can not be claimed where there is another mode of access exists. A. I. R. 1930 Mad. 609=1930 M. W. N. 225=124 Ind. Cas. 593; see also A. I. R. 1930 All. 560=123 Ind. Cas. 762; 70 Ind. Cas. 173; 28 Bom. L. R. 403. It is a question of fact whether easement is one of necessity or not. A. I R. 1927 Mad. 963=103 Ind. Cas. 862. Where a purchaser
he cannot pass over his
pasture on. landlord's land
grant. If landlord granted
permision to graze the cattle customary right cannot be held to exist. A. I. R. 1928 Mad 799=106 Ind. Cas. 195. In the absence of express reservation grantor is taken to have relinquished all rights over the tenement granted. A. I. R. 1925 Lah 473=27 P. L. R. 375=96 Ind. Cas 913. Section 13 and illustrations enunciate principles of justice, equity and good conscience. Where of two or more adjoining parcels one derives from the other a benefit of a continuous and apparent nature, the latter will pass to the grantee by implication. 36 C. L. J. 406=72 Ind. Cas. 576; see also 78 Ind Cas. 561.

Clause (a)—The Court would be justified in holding that, on the transfer of one portion of the property, the easement for the discharge of rain water over the other was necessary under this clause. 4 S. L. R. 180; see also 4 B. 452.

which a right of way is not, 1924 Lah. 488=6 Lah. L. J. 176. Where a portion of land is sold, an easement apparent, continuous and necessary for enjoying the portions severed from the transferor's land will pass to the transferee unless a contrary intention is expressed in the instrument of the transfer. 47 M. L. J. 302=81 Ind. Cas. 833.
absolute necessity,
distinction between
sary and yet necessary for the purpose of enjoying the property as it was enjoyed when the transfer of it took place; the existence of this last necessity has to be determined by reference to the prior user. 3 Bom. L. R. 601; see also A I. R. 1930 All. 313.

Clause(c).—Where a *quasi*-tenement is sold without express reservation of a right of way 'not absolutely necessary' the principle that a man cannot derogate from his grant applies and no such right is saved. 16 C. P. L. R. 155; see 26 M. 66.

Clause(d).—*Vide* 29 Ind. Cas. 495.

Clauses (e) and (f)—There is a distinction between the cases falling under clauses (e) and (f). Under the former the plaintiff has to prove that the easement claimed was necessary for the enjoyment of the property allotted to him by partition and under the latter he has to prove four things (1) that the easement was apparent, (2) that it was continuous, (3) that it was necessary for enjoying his share after partition as it was enjoyed at the time when the partition took effect, and (4) that no intention inconsistent with the easement claimed was expressed or necessarily implied in the partition. No right of easement after partition arises on the ground that the easement is necessary for enjoying at share as it was enjoyed immediately before partition. 70 Ind. Cas. 930=1923 Oudh 57; see also A. I. R. 1928 Lah. 497; A. I. R. 1927 Lah. 383=9 L. L. J. 169=28 P.

L. R. 334 ; 51 C. 789=78 Ind Cas. 908 ; 53 Ind. Cas 584. The flow of rain water
Ind. Cas. 896. See also 28
would impose a burden
quasi-easement, *Vide* 90
; A. I. R. 1934 Mad 632

Direction of way of necessity.

14. When *a** right to a way of necessity is created under section 13, the *transferor the legal representative of the testator,* or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way ; but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

Notes.—"And the grantor shall assign the way where he can best spare it". 2 *Roll Abr tit Graunt* 2 pl 17, 18 When the person was entitled to set out the way the dominant owner 'might take a convenient way without permision (*Sans le gree*) of the plaintiff, and the law would then adjudge whether such way was convenient and sufficient or otherwise." *Palker* v *Welsted*, 1 Wms. Saund. 323 n. "For it is ... of necessity, and it is *pro bono publico* that ... 2 Leet. 1487. This right is to be ... which it is incident. *Daut* v. *Kingscote*, 6 M. & W 174 ; *Macnaghten* v. *Baird*, (1903) 2 Ir. R 731 The necessity must be judged at the date of the conveyance *Holmes* v. *Going*, 2 Bing. 76.

Acquisition by prescription.

15. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, *without interruption, and for twenty years,* and

where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement, *shall be absolute.*

Each of the said periods of twenty years shall be taken to be a period ending ... wherein the claim to ...

... meaning of this section, ... the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

* In s 14 the italicised article *a* has been inserted by Act XII of 1891.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if for the words "twenty years," the words "sixty years" were substituted.

Illustrations.

(*a*) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment

(*b*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years The defendant proves that for a year of that time *the plaintiff was entitled to possession of the servient heritage* as lessee *thereof* and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(*c*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years had admitted that the user was not of right, and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

Notes —There is no substantial difference between the English and the Indian laws as to the acquisition of the prescriptive title and the inference and presumption deducible from long user of the same. When user is provided the presumption is [illegible] ship or in the exercise of a right of easement. Even when the enjoy[illegible] time immemorial, the user must be proved to be as of right as an easement and not by virtue of ownership. A I. R. 1930 Pat. 7 ; see also 33 C. W. N. 517=56 C. 927 ; A. I R. 1927 Nag. 386 ; A. I R. 1926 Lah. 522. An easement may be enjoyed as an ancient right or by immemorial user apart from s. 15. 23 Bom. L. R. 422=45 B. 1027=62 Ind. Cas 65. From immemorial user lost grant may be presumed. A. I. R. 1933 Cal. 215=56 C. L. J. 274.

Title to easement by prescription.—"Prescription may be defined to be—a title acquired by possession had during the time and in the manner fixed by law. After the lapse of the requisite period the law adds the right of property [illegible] only"—*Gale on Easements*, p. 185 ; see [illegible] *ossession here spoken of is legal* possession. [illegible] ust be not only a corporeal detention, or [illegible] he nature of the right, is equivalent to it, but there must be also the intention to act as owner. *Gale on Easements*, p. 185. From the definition of this section the enjoyment of the easement must be without interruption both as to the manner and during the time required by the law. In *Monmouthshire Canal Company* v. *Harford*, (1839) 1 C. M. & R. 631, *Baron Parke* observed : "An enjoyment of an easement for one week and a cessation to enjoy it during the next week and so on alternately would confer no right." See also 39 C. 53=11 Ind. Cas. 180 ; 25 Ind. Cas 405=12 A. L. J. 693 ; 49 Ind. Cas. 963=21 Bom. L R 709 ; 26 Ind. Cas. 781 ; 35 Ind. Cas. 749=4 L W. 128=20 M. L. T. 544 ; 25 Ind. Cas. 499 ; *1923 M. W. N. 454=18 L. W. 404* ; *1923 Mad. 674*. There are certain classes of easements such as a right of way, in which repeated acts of the owner are required. In such case sufficient user is proved if that user affords a sufficient indication to the owner of the servient tenement that a right is claimed against him. *Hollins* v. *Verney*, (1884) L. R. 13 B. D. 304 ; *Smith* v. *Banter*, (1900) 2 Ch. 138 ; *Andrews* v. *Waite*, (1907) 2 Ch. 507. An user by permission does not confer any right. *Monmouthshire* v. *Harford*, 1 C. M. & R. 631. *This section* has no application when a right to the unimpeded use of water had been acquired before the Act came into force. 4 C. P. L. R. 16. Where the defendants have been in the enjoyment of a right of way "openly, peaceably and as of right" (within the intention of acquiring a right of easement) as a means of access to their share of the house. *Held*, that the defendants acquired an easement of necessity. 9 M. L. T. 350=9 Ind. Cas. 640. A superior proprietor is not barrsd from acquiring an easement by prescription under this section over land held by an under-

pro[illegible] laim of the higher right of own[illegible] easement A. I. R. 1930 Pat[illegible] of[illegible] Ind. [illegible] dominant owner. A. I. R. 1926 Cal. 647=91 Ind. Cas. 348. The right to stack manure can be acquired as any other right by prescription A. I. R. 1927 All. 115=98 Ind. Cas. 460. A riparian right is a natural right not acquired by immemorial user. It exists by law A. I. R 1927 Mad. 988=50 M. 961=53 M. L. J. 868 The right by efflux of 20 years is inchoate only and in order to establish it the enjoyment relied on, must be an enjoyment for 20 years up to within two years of the institution of the suit. A I. R. 1929 Cal. 542=33 C. W. N 517=56 C. 927=119 Ind. Cas. 293 In the absence of a finding that the tank is either *private property or that of Government a right of easement by prescription cannot* be established. A I. R. 1926 Mad 625=92 Ind. Cas 465. Prescriptive right to throw back water and keep it standing on the land of another exists only in the case of water flowing in a definite stream and not to surface water. A. I. R 1927 Mad. 144=1926 M. W. N. 652=97 Ind Cas 832. If the right that a person is exercising is not with the consciousness that he is restricting another person's rights of ownership, he cannot be enjoying a right of easement A. I. R. 1927 Nag. 334=23 N. L R. 117=104 Ind. Cas. 431. A dominant owner, who has neither been obliged to resort to physical force nor has been *prevented by use of force by* servient owner from exercising such right at [illegible] suit is enjoying peaceably notwithstanding oral [illegible] L J. 685=31 Ind. Cas. 528 Nuisance caused by [illegible] reate a "right" within the definition of easement. [illegible] n. L. R 663=89 Ind Cas. 191, see also 67 M. L J [illegible] njoyment necessary to qualify for a right of eas[illegible] from [illegible]

[illegible] Ind. Cas. 74 Period of 20 years should end within two years [illegible] n 15 is not exhaustive [illegible] A I R. 1932 Bom. [illegible] *owner for use of land,* [illegible] 33 A L J. 516. Where person enjoys right over property under supposition that he is owner, he does not acquire easement. A. I R. 1932 Bom. 513=56 B. 427=34 Bom L. R. 1015. Right to bury or burn dead bodies on another's land cannot be acquired by prescription. 138 Ind. Cas 325=33 P.L.R 157=A I.R 1932 Lah 256 A occupier may also acquire right by easement. 67 M. L. J. 262=A. I. R. 1934 Mad. 575=40 L. W. 514 In an action to establish an easement of a right of way over a lane the plaintiff should prove enjoyment of the way *as an easement for the period of prescription.* 8 Ind. Cas 502. To acquire a right of way by user there must be a peaceable and open enjoyment by a person claiming title thereto as an easement and as of right without interruption and for twenty years. 2 C P. L. R. 34 ; 39 C 53 ; 11 Ind. Cas 180 ; 21 Bom. L R. 709 ; 26 Ind Cas. 781 ; 30 Ind. Cas. 523=29 M L J 635 ; 9 Ind. Cas. 764=9 M. L. T. 274 ; 9 Ind Cas. 640=9 M. L. T 350 ; 6 N. L. J. 59=1923 Nag. 192 ; 26 Ind. Cas. 723=39 M. 304.

A right of easement can be acquired in waste land. 65 Ind. Cas 509. An ease[illegible] be acquired 24 Bom. L. [illegible] ater on the land of another [illegible] *n easement is not neces*[illegible] e lessor coupled with an [illegible] ion to abandon the right [illegible] The right of easement may [illegible] a defined channel, whether natural or artificial 7 M. 530 The right to hold something as a musical festival can not exist as an easement 36 C 615=13 C. W. N. 1002=1 Ind. Cas. 108. A tenant can not acquire an easement by prescription in other lands of his lessor. 9. C. W. N 856 ; see also 56 Ind Cas 598. *A tenant may have a right of pasturage* on his landlords' waste land by immemorial user. In such a case of immemorial user the presumption is that the right has a legal origin 31 C. 503 P. C =31 I A. 75=8 C. W. N. 425=14 M L J. 152 P. C. Knowledge of the fact of enjoyment on the part

of the owner of the servient tenement is essential for the creation of the right of easement. 54 Ind. Cas. 936.

An easement once acquired is not necessarily lost by mere user : and the question of abandonment is one of intention to be decided on the facts of each particular case. ... R. 1869. The rule that easements are extinguished ... of the dominant and servient tenements becomes ... person, cannot apply to a case where there has been no real or genuine unity of seisin but the dominant owner had wrongfully possessed himself of the servient tenement as a trespasser. A. W. N. 1882, 76. Landholder, ... not entitled to sue and obtain posse- ... 16 M. 304.

... in Explanation II of this section of the statutory period, in the enjoyment of a right of easement, and the plaintiff has been in enjoyment of the right for at least forty years prior to date of the suit, such enjoyment must be referred to a legal origin. 2 Ind. Cas. 315=5 M. L. T. 107. The right of privacy does not arise from prescription but is a creation of custom which has been recognised as such in Gujrat by judicial decision. 2 Bom. L. R. 454.

The right to an easement by prescription can be acquired only by enjoyment of the right for 20 years ending within two years previous to the institution of the suit. 25 W. R. 15 ; see also 12 A. L. J 415=24 Ind. Cas. 126 ; 12 A. L. J. 693. A title by prescription may be acquired by long possession ; but it must be possession not merely permissive, but as of right, *e. g.*, in the capacity of a master, or, in the case of easements adversely to the owner of the land. 13 W. R. 344. There can be no prescriptive right to projection which has been erected merely for the purpose of ornamentation. 30 C. 503=7 C. W. N, 649.

... light and air, the enjoyment ... frames are put into and the ... reference to which the right is claimed. 1 B. H. C R. 148. Where there has ... air for the statutory period of 20 years, no right of ... 660. The right of air is co-extensive with the righ ... has been a long and uninterrupted user for a long ... that the user has been as of right and that the right had a lawful origin if a lawful origin is possible. 35 Ind. Cas. 749=20 M. L T. 544=4 L W 128=(1916) 2 M. W. N. 192. To establish a right of an easement by statutory prescription it is necessary to prove enjoyment of the right (whether 20 years or 30 years) within "two years next before the institution of the suit where in the claim to which such period relates is ... an easement" in this section do not ... assertion of claim of an easement. ... easement" was introduced in order to show that unity of title or possession during the period of 20 years, or a portion thereof, make the possession useless to create a right of easement. 17 Ind. Cas. 112. An uninterrupted enjoyment for more than 20 years is sufficient. 61 Ind. Cas. 569 ; 39 M. L J 574. A right of way or other easement must be definite and not so large as to destroy all the ordinary uses of the servient property and make it impossible that it should ever be used for any useful purpose. 43 A. 345=19 ... sement may be required with respect ... water of a tank. 33 M. L. J. 674. The ... n peaceably and openly enjoyed by a ... thereto as an easement and also right without interruption and for 20 years is upon the pers n who asserts the right. 25 Ind. Cas. 499. This section is only remedial in nature and is neither prohibitory nor exhaustive. 7 L. W. 1107=22 M. L J. 685=18 M. L. T. 476=(1916) M. W. N. 113.

The words "belongs to Government" refer not to the time of suit but to the time during which the easement is enjoyed. 41 M. 622=34 M. L J. 396=45 Ind. Cas. 98 ; see also 1924 All. 724. To claim 60 years' rule Government must be owner at the date when easement is claimed. A. I. R. 1929 All. 382=116 Ind. Cas. 806 ; see also A. I. R 1928 Oudh 17=106 Ind. Cas. 305 ; A. I. R. 1928 Mad. 96=105 Ind. Cas. 84 ; 78 Ind. Cas. 844 ; A. I R. 1934 Mad. 575=67 M. L J. 262 ; 67 M. L. J. 382. A statutory prescription cannot be acquired unless and until the claim thereto has been contested in a suit 72 Ind Cas. 909=1923 Oudh 29. The enjoyment necessary to qualify for a right of easement is something different from actual user. 21 A. L J 569=74 Ind. Cas. 922. Acts done during statutory period which are only referable to a purported character of owner can not validate

a subsequent claim to an easement. 49 M. 820=A. I. R. 1926 Mad. 728 (F. B.). To create an easement the right must be acquired for the benefit of the dominant heritage. 92 Ind Cas 465=A. I. R 1926 Mad. 625. The mere giving of notices does not serve to interrupt the peaceable enjoyment of the easement. 21 Bom. L. R. 709. When the user is proved the presumption is that it is of right. 69 Ind. Cas. 11. An easement can be acquired as regards a right to support. 15 Ind. Cas. 294=(1912) M. W. N 1117. A right of easement can be acquired by projection of eaves of a cottage. 24 Bom. L. R 305.

Customary right.—To establish a customary right the enjoyment must have been so acquiesced in by the owner as would give rise to the inference that originally by agreement or otherwise the usage had become a customary law of the place in respect of the persons and things which it concerned A. I. R 1928 Nag. 87=23 N. L. R. 192 ; see also 16 N. L R 76=54 Ind. Cas 936. No easement can be claimed under this section where it has been broken for a period of more than two years before suit. 114 Ind Cas 512 ; see also A I R. 1927 Mad. 238=98 Ind Cas. 886 ; but see A. I. R. 1929 All 497 : A I. R. 1929 All 382. What is not customary easement, *vide* 29 N. L. R. 85=A I. R 1933 Nag. 74.

Light and air—Easement of light and air through holes in joint wall dividing two tenements can be claimed. A. I. R 1933 Lah. 28=142 Ind. Cas. 764=33 P L. R. [illegible] injunction can be granted. A. I. R. 1933 Lah. 29 [illegible] see also A. I. R 1933 Rang. 351 ; A. I. R. 1928 [illegible] r supporting an action for obstruction of light [illegible] nuisance. 11 Bur L. T. 109=49 Ind. Cas. 458; [illegible] N. L. J 136 ; A I R. 1928 Lah 735; A. I. R. 1928 Pat. 106 ; A I R. 1927 All. 191=99 Ind. Cas. 5. There is no easement for the free access of wind. A. I. R. 1923 Cal. 256=36 C. L J. 406=72 Ind. Cas. 576.

Right of fishery.—Under s. 15 a right of fishery cannot be acquired by prescription ; but from uninterrupted user an implied grant may be presumed. 14 N L. R. 35=43 Ind Cas 962 ; see also A. I R. 1921 Bom. 93=23 Bom. L R. 936 ; A. I. R. 1930 Mad. 679=125 Ind. Cas. 545.

Right of way—When a right of way is "open" a presumption would arise that the owner was aware of the user and had acquiesced in it A. I. R 1929 Bom 144=31 Bom L. R. 120=116 Ind. Cas 231. Though a sweeper is a municipal servant, a right of passage for his use can be acquired A I R. 1926 Bom 282=28 Bom L. R. 601=95 Ind Cas. 170 ; see also 76 Ind. Cas 754=24 Bom. L. R. 298 The absence of a regular or defined pathway over a waste does not negative the acquisition of a right of way over it. A. I. R. 1924 Cal. 359=70 Ind. Cas 111 ; see also A. I. R. 1934 Pat. 420.

Right to support—Right to support of land from adjacent soil is one to which owner of surface soil is *prima facie* entitled. A I R. 1933 Rang. 18=11 Rang. 47=143 Ind. Cas. 292 The right to lateral support to a wall from adjoining land can only be acquired by prescription for 20 years A. I. R. 1921 Mad. 322=68 Ind. Cas. 831 ; see also A. I R 1928 Nag 91=10 N. L J 226=109 Ind. Cas. 281 ; A. I R. 1929 Mad. 819=1929 M. W. N 528 ; A I. R. 1929 All. 885=1930 A. L J. 340=118 Ind. Cas. 715 ; A I. R. 1933 Rang. 18.

[illegible] lished prescrip- [illegible] a defined and [illegible] 4 P L. T 81=2 Pat 110 ; see also A I. R. 1930 Mad 941 ; 56 C 161=32 C. W. N. 1109 , A. I. R. 1928 Mad. 52 ; 21 A. L J 519=74 Ind. Cas 922 ; 46 B 115.

Exclusion in favour of reversioner of servient heritage.

16 Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land

Illustration.

A sues for declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years ; but B shows that during ten of these years C had a life interest in the land ; that on C's death B became [illegible] after C's death, he contested A's [illegible], with reference to the provisions [illegible] years.

Notes.—The period of any tenancy for life must be excluded (if properly pleaded) in the computation of the periods required for a valid easement. *Clayton* v. *Carby*, (1842) 2 G. & D. 174 ; *Pye* v. *Mumford*, (1848) 11 Q. B. 666. Mere user as against *Kanomdar* does not avail against the *jenmie* or a subsequent *malcharathdar* and they can unless the *jenmie* has acquired in the user disaffirm the same and put an end to the prescription within three years after the right opened to them, under this section. 24 L. W. 691.

Rights which cannot be acquired by prescription

17. Easements acquired under section 15 are said to be acquired by prescription, and are called prescriptive rights.

None of the following rights can be so acquired :—

(*a*) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed ;

(*b*) a right to the free passage of light or air to an open space of ground ;

(*c*) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise ;

(*d*) a right to underground water not passing in a defined channel.

Clause (a)—In *Hall* v. *Nottingham*, (1875) 1 Ex. D. 1. the possibility that the custom there set up might have the effect of taking away from the owner of the freehold the whole use and enjoyment of his property was not thought a sufficient ground for disallowing it. "The mere possibility that after many years the number

the exercise of the right, the servient tenement will be totally destroyed. The phrase ' tend to the total destruction" means such interference as would render dominant owner's rights largely inoperative. 130 Ind. Cas. 546=A. I. R. 1931 Sind 1=25 S. L. R. 257.

This section is intended to apply not to rights of irrigation in natural streams, but to rights in the nature of profits *a pendre* which do not include a right to water. 94 Ind. Cas. 929=2 Pat. L T. 547. This section implies that a right of easement in connection with the use of water of artificial channels or of water derived from an artificial tank or pool can be acquired by prescription. 33 M. L. J. 674=(1917) M. W. N. 863. A right to the use of water flowing in undefined channels cannot be acquired by prescription. A. I. R. 1921 Lah. 286=3 Lah. L. J. 555=64 Ind. Cas. 158 ; see also 45 Ind. Cas. 448=42 Bom. 288=20 Bom L. R. 398. An easement can be acquired by custom if not forbidden by statute. A. I. R. 1929 Rang. 31=6 Rang. 615. Owner of lower land can acquire a right to receive water falling on or flowing into the higher land. A. I. R. 1922 Bom. 378=23 Bom L. R. 1004=46 B. 115 ; see also A. I. R. 1928 Pat. 279=107 Ind. Cas. 542.

Customary easements.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(*a*) By the custom of a certain village every cultivator of village-land is entitled, as such, to graze his cattle on the common pasture. A, having become the tenant of a plot of uncultivated land in the village, breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom

(*b*) By the custom of a certain town no owner or occupier of a house can open a

new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portion of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

Notes.—Any kind of easement recognised by the custom of a province will fall within the term "customary easements." It is not limited to easements of a kind which could not be recognised at all apart from official customs. 74 Ind. Cas. 703. A right to the crushing of the sugar-cane and boiling of the juice can be claimed as a customary easement. 12 A L. J. 963 Customary rights need not be immemorial 129 Ind. Cas. 630=32 M. L. W. 978=A. I. R. 1931 Mad 213. Customary right to do ceremonies under tree belonging to another is valid and can be [illegible] ht of [illegible] 334. [illegible] A. [illegible] to [illegible] jab, in the United Provinces of [illegible], see also A. I. R 1929 Oudh. 437=6 O. W. N. 854; A. I. R. 1929 All. 809=119 Ind. Cas. 834; A. I. R. 1929 All 676=1929 A. L. J. 1028; 5 O. W. N. 538=110 Ind Cas. 693; A. I. R. 1934 All. 527=16 S L. R 17. Where evidence is that right exists from time immemorial what is proved is customary right. A I. R. 1933 Cal. 578=57 C. L. J. 67; see also A. I. R. 1931 Mad. 213=1930 M. W. N. 515. The custom to be recognized must be reasonably certain, ancient and open to such an extent as to suggest [illegible] e has become a customary law. A. I. R. [illegible] A. I. R. 1927 Mad. 76=98 Ind. Cas. 800; [illegible] 38. Customary right is not an easement. [illegible] though it is not necessary that there should [illegible] y be presumed. Nor is it necessary to trace it to immemorial times. A. I. R. 1923 Cal. 200=36 C. L. J. 280=70 Ind. Cas. 263; see also A. I. R. 1924 Lah. 275=69 Ind. Cas. 528. In order to find a customary right, enjoyment for a period at least as long as would a prescriptive or easementary right require is necessary. A. I. R. 1927 Mad. 144=1926 M. W. N. 652=97 Ind. Cas. 832. A custom not to complain against overhanging of trees over another's lands is unreasonable and cannot be pleaded. A. I. R. 1925 Bom. 446=27 Bom. L. R. 663=89 Ind. Cas. 191. A custom by which earth is taken from a piece of waste land to repair houses in a village after innundations is not unreasonable. A. I. R. 1924 Pat. 303=72 Ind. Cas. 431. Customary easement is not limited to mere special customs such as right of pasturage, right of privacy, etc. Any kind of recognized custom will come within the term. A. I. R. 1924 All 159=74 Ind. Cas. 703 A customary right to bathe in a tank can be acquired by the residents of a village. A. I. R. 1927 Mad. 73=24 M. L. W. 691=98 Ind. Cas. 619 Right to bury dead bodies can be acquired only by presumption of lost grant. A. I. R. 1934 All. 868=1934 A. L. J. 809=149 Ind. Cas. 797. Customary right must be proved by cogent evidence. A. I. R. 1934 Pat. 30=148 Ind. Cas. 498. Right of privacy can be acquired by local custom. A. I. R. 1935 All. 754.

Transfer of dominant heritage passes easement.

19. Where the dominant heritage is transferred, or devolves by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Illustration.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representatives so long as the lease continues.

Notes.—Easements run with the land. A. I. R. 1924 Lah. 488; see also A. I. R. 1930 Pat. 7=124 Ind. Cas. 385; 59 Ind. Cas. 673.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

Rules controlled by contract or title.

20. The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument of decree (if any) by which the easement referred to was imposed.

Incidents of customary easements.

And when any incident of any customary easement is inconsistent with such rules, nothing in this Chapter shall affect such incident.

Notes.—There can be no question of easement as regards light and air in the case of joint property. 28 Bom. L. R. 1000=97 Ind. Cas. 691=A. I. R. 1926 Bom. 545 An easement of way over another's land by virtue of an agreement is governed by s 20 and not by s. 22. 32 Bom. L. R. 1425=128 Ind. Cas. 886 ; see also A. I. R. 1931 Bom. 87=32 Bom. L. R. 1425=128 Ind. Cas. 886.

Bar to use unconnected with enjoyment.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage

Illustrations.

(*a*) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(*b*) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors, and customers , for this is a purpose connected with the enjoyment of the dominant heritage. So if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

Notes– [illegible] *J.* said : "It is a claim ....of a [illegible] onnected with the estate ....I can [illegible] ment of a right of way for the use of sweeper can be acquired though sweeper is a servant of the Municipality. A. I. R. 1926 Bom 282=28 Bom. L. R. 601=95 Ind. Cas 170.

Exercise of easement.

22 The dominant owner must exercise his right in the mode which is least onerous to the servient owner ; and when the exercise of an easement can without detriment to the dominant owner , be confined to a determinant part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Confinement of exercise of easement.

Illustrations.

(*a*) A has a right of way over B's field. A must enter the way at either end, and not at any intermediate point.

(*b*) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed

Notes.—Under this section the dominant owner must exercise his right in the [illegible]

of the servient property. 60 Ind. Cas. 990=43 A. 345=19 A. L. J. 126 ; see also A. I R. 1922 Bom 407=67 Ind. Cas. 413. Under s. 22 the dominant owner must exercise his right in the mode which is least onerous to the servient tenement. 69 Ind. Cas. 406 ; A. I R. 1925 Cal. 788=41 C. L. J. 370=87 Ind. Cas. 19 ; 88 Ind. Cas. 970=A. I. R. 1926 Cal. 462.

Right to alter mode of enjoyment.

23. Subject to the provisions of section 22, the dominant owner may, from time to time, alter the mode and place of enjoying the easement provided that he does not thereby impose any additional burden on the servient heritage.

Exception.—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(*a*) A, the owner of a saw-mill has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water.

(*b*) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a a greater burden on B's land.

(*c*) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill-paper from rags. He [illegible] making in the mill [illegible] ot substantially in- [illegible] on.

(*d*) A, a riparian owner, acquires as against the lower riparian owners a prescriptive right to pollute a stream by throwing saw-dust into it. This does not entitle A to polute the stream by discharging into it poisonous liquor.

Notes —The burden on the servient tenement cannot be increased by the owner of the dominant tenement. 58 Ind. Cas. 967=24 C. W. N. 896=32 C. L. J. 27=58 Ind. Cas. 854. The dominant owner may from time to time alter the mode and place of enjoying the easement provided that he does not thereby impose an additional burden on the servient heritage. *Campbell* v. *Russell*, 26 L. J. Ex. 34 ; 97 Ind. [illegible] erson pro- [illegible] n, when he [illegible] increased [illegible] tenement. [illegible] onstruction [illegible] ot mean a [illegible] Cas. 985. The defendant [illegible] the plaintiff's land. He [illegible] with spouts on his roof [illegible] burden on the plaintiff's land was increased within the meaning of this section 13 A. L. J 791. Whether particular user imposes additional burden on servient heritage, is question of fact. 130 Ind. Cas. 661=A. I. R. 1931 Mad. 128 ; see also A. I. R. 1931 Bom 490=33 Bom. L. R. 1114 ; A. I. R. 1932 Cal. 249=35 C. W. N. 963 ; A. I. R. 1931 Mad. 128=61 M L J. 58 ; A. I. R. 1926 Bom. 537=50 B. 635 ; A. I. R. 1928 Mad. 52 ; A I. R. 1934 Oudh 237=11 O. W. N. 657.

Right to do acts to secure enjoyment.

24. The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement ; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible, and the dominant owner must repair as far as practicable, the damage (If any) caused by the act to the servient heritage.

Accessory rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations.

(*a*) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(*b*) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain to adopt it to the new sewer, provided that he does not thereby impose any additional

way over B's land. The way ...oss it. A may enter on B's land and repair the way or remove the tree from it.

...er B's land. B renders ... over the adjoining land

(*e*) A, as owner of a certain house has a right of way over B's field. A may remove rocks to make the way

(*f*) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(*g*) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an innundation. A may enter upon B's land, and repair the dam.

Notes—The pipes and reservoirs laid by a spinning and weaving company beneath the railway line belonged to the company and were all along kept in repairs by them. They therefore had the right, as dominant owners, to enter on the premises of the railway company, who were the servient owners to effect any repairs that ... necessity to re... ...e deemed to be ... ...t of discharging rain water upon defendant's land from projecting eaves, he can not pray for an injunction restraining the defendant from building upon his land in such a way as to prevent the plaintiff from going upon it for all the purposes of repairing the wall which supported the eaves 42 B. 529→20 Bom L R. 403=45 Ind. Cas. 422. The dominant owner has a right to do everything requisite to secure to himself the fullest advantage of his servitude but thereby he should not impose any additional burden on the servient tenement 39 Ind. Cas. 592 ; 39 Ind Cas. 590. There can be no easement in favour of an indeterminate body of persons. 14 N. L. R. 78=44 Ind. Cas. 868.

Illustration(d) —*Vide* A. I. R. 1931 Lah. 199=149 Ind. Cas. 949.

Liability for expenses necessary for preservation of easement.

25. The expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Notes.—As a general rule, easements impose no personal obligation upon the owner of the servient tenement, to do anything, the burden of repair falls upon the owner of the dominant tenement. *Gale on Easements*, p 475. "If the grantee of a way wants it to be repaired he must repair it himself." *Per Coleridge J.* in *Duncan* v. *Louch*, (1845) 6 Q B. 909 ; see also *R. H. Buckley* v. *N. Buckley*. (1898) 2 Q. B. 608 ; *Pomfret* v. *Ricroft*, 1 Saund. 322 ; *Gerrard* v. *Cooke*, (1806) 2 Bor. & Bull. N. R. 109 ; "By the common law of England" says *Lord Mansfield* in *Tayler* v. *Whitehead*, 2 Douglas 749 "he that hath the use of a thing ought to repair it." See also *Ingram* v. *Morecraft*, 33 Beav. 49 ; *Robbins* v. *Jones*, 15 C. B. N. S. 221 ; *Colebebk* v. *Girdler's Co*, L R. 1 Q. B D. 234. *Highway* v. *Grant*, 51 L. J. Q. B. 357.

Liability for damage from want of repair.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.

Notes.—"Where the enjoyment of the easement is had by an artificial work (*opus manufactum*) the owner of the dominant tenement is liable for any damages arising from its want of repair. *Gale on Easements*, p 476 ; see also *Bell* v. *Twenty-man* (1841) 1 Q. B. 766 ; *Lord Agreement* v. *Pulmean*, M & M 404 ; *Humphries* v. *Cousins*, L. R. 2 C. P. D 239 ; but see *Natham* v. *Rouse*, (1905) 1 K. B. 527. It would appear to be more accurate to say that if the dominant owner can not exercise the easement strictly within its limits, without repairing the artificial work he must do the necessary repairs if he wishes to exercise the easement. *Gale on Easements*, p. 476.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement, or to render its exercise less convenient.

Servient owner not bound to do anything.

Illustrations.

(*a*) A, as a owner of a house, has a right to lead water and send sewage through B's land. B is not bound, as servient owner, to clear the watercourse, or scour the sewer.

(*b*) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed, but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(*c*) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound, as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(*d*) A, in respect of his mill is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(*e*) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

Notes —Person claiming the right can not claim more than that his right should not be curtailed in any way. A I. R 1928 Lah. 709=108 Ind. Cas. 610. The owner of a servient tenement must not so deal with servient tenement as to render the easement incapable or more difficult of enjoyment by the owner of the dominant tenement A. I R 1925 Nag 389=87 Ind. Cas 899. Where right to drop water on public road is acquired from Municipality Municipality, can permit another to build land very near the springs. 25 Bom L. R. 784 ; see also 47 B. 809=83 Ind. Cas. 856.

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—

Extent of easements.

Easement of necessity.

An easement of necessity is co extensive with the necessity as it existed when the easement was imposed.

Other easements.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired.

In the absence of evidence as to such intention and purpose—

Right of way.

(*a*) a right of way of any one kind does not include a right of way of any other kind:

Right to light or air acquired by grant.

(*b*) the extent of a right to the passage of light or air to a certain window, door, or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testor died or the non-testamentary instrument was made:

Prescriptive right to light or air.

(*c*) the extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole the prescriptive period irrespectively of the purposes for which it has been

(*d*) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose: and

Prescriptive right to pollute air and water.

(*e*) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

Other prescriptive rights.

Notes.—The accessorial right which the law thus confers is to be measured by the nature of the grant or reservation to which it is incident. *Doud v. Kings Cote,* (1840) 6 M. & W. 174; *Corporation of London v. Riggs,* L. R. 13 Ch. D. 798; *Ray v. Hazeldine,* (1904) 2 Ch. 17. The mere non-user of a mode cannot deprive a person of his right to enjoy the easement in that particular mode unless there was any in-

to the purpose for which the right was acquired. 78 Ind. Cas. 563 In an action for damages or injunction substantial interference with physical comfort must be proved. 145 Ind. Cas. 530=1933 A. L. J. 1006=A. I. R. 1933 All. 492. Power to make way over another's land must be exercised with reasonable care. A. I. R. 1932 Oudh 274=7 Luck. 530=9 O. W. N. 159.

Clause (a)—*Vide* 22 Bom. L. R. 1131; A. I. R. 1931 Nag. 80; A. I. R. 1929 All. 430; 73 Ind. Cas. 531.

Clause (c).—Where a plaintiff is claiming relief, upon the ground that his pres- ht and air to a certain window has been interfered right has in fact being interfered with. 4 A. L. J. 175; see also 30 B. 319; 7 Bom. L. R. 352. The the servient owner shall not obstruct the free ... hose cones and pencils of rays that have hitherto found access to it. 33 Ind. Cas 615.

Clause (d).—This clause expressly recognises the right to pollute air as a right capable of being acquired by prescription. 22 B. 831.

Limits of easement—Where the area over which an easement of way has been acquired is small and the points of egress and ingress are fixed it is not necessary for the Court to delineate the particular portion of the ground which persons enjoying the easement are entitled to use. 45 Ind. Cas. 585.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Increase of easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and, if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(*a*) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(*b*) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it. A extends his works, and thereby increases the quantity discharged. He is respon-

Notes—As every easement is a restriction upon the rights of property of the owner of the servient tenement, no alteration can be mads in the mode of enjoyment by the owner of the dominant heritage, the effect of which will be to increase such restriction. *Ankerson* v. *Conally*, (1906) 2 Ch. 544; (1907) 1 Ch. 678; see also A. I. R. 1933 All. 492=1933 A. L. J. 1006; 58 Ind. Cas. 967; 33 C W. N. 189.

Partition of dominant heritage.

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so as to increase substantially the burden of the servient heritage: provided that such annexation is consistent with the terms of the instrument, decree, or revenue-proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period.

Illustrations.

(*a*) A house to which a right of way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path

(*b*) A house to which is an [illegible] extent of fifty buckets a day [illegible] granted *to A, the other to B* [illegible] to draw from the well fifty buc[illegible] exceed fifty buckets a day.

(*c*) A, having in respect of his house, an easement of light divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

Notes.—In [illegible] the easement a [illegible] sistent with ter[illegible] Cas. 66=1923 [illegible] land and that part affords an accommodation to the part retained, that accommodation will upon severance ripen into an easement, if it be such as to be absolutely necessary for the enjoyment of the part retained and the accommodation be such that it is capable of constituting the subject-matter of an easement. 39 C. L. J. 518.

Obstruction in case of excessive user.

31. In the case of excessive user of an easement, the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage, provided that such user cannnot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement

Illustration.

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user

Notes—Servient owner cannot construct so as to interfere with the rights of the dominent owner as fixed by an award. A. I. R. 1926 Oudh 437=6 O W. N. 854.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

Right to enjoyment without disturbance.

32 The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

Illustration.

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land and obstructs A in his right of way. A may sue C for compensation, [illegible] for the entry, but for the obstruction.

Notes.—"As it is the duty of the owner of the dominant tenement not to do any [illegible] of the servient tenements [illegible] the exercise of the right [illegible] requisite for its full and free enjoyment."—*Gale on Easements*, p. 507.

Suit for disturbance of easement

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto, provided that the disturbance has actually caused substantial damage to the plaintiff.

Explanation I.—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34.

Explanation II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section, unless it falls within the first Explanation, or interferes materially with the physical comfort of the plaintiff or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it inteferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

(*a*) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(*b*) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A.

Notes—In a case of obstruction of easement of light and air injunction cannot be refused on the ground that the plaintiff may remedy his mischief caused by the obstruction by making structural alterations in respect of her own building. 10 M. L. T. 121=2 M. W. N. 1911, 89. Where diminution is caused in the water supply but is being cut off partially, the injured party has a cause of action apart from proof of actual damage and an injunction may be granted if he proves prospective probable damage. A. I. R 1931 Mad. 284. No damage is substantial unless it materially diminishes the value of the dominant heritage and interferes with physical comfort of its owner or prevents him from carrying on his business as [illegible]

[illegible] damage to a person accustomed to living [illegible] This section [illegible] e has actually [illegible] ion. The law [illegible] 13 A. L. J. [illegible] disturbed by shadow which would be cast by defendant's building on portion of plaintiff's wall without doors or windows and no injunction can be granted to plaintiff. 131 Ind. Cas. 104=12 Lah. 736=33 P. L. R. 371=A. I. R. 1931 Lah. 433. In order to get injunction the plaintiff must prove diminution of light and air to such an extent as would hamper ordinary course of business. A. I. R. 1934 Lah. 240=35 P. L. R. 292=15 Lah. 415=147 Ind. Cas. 640.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation, unless and until substantial damage is actually sustained.

When cause of action arises for removal of support.

35. Subject to the provisions of the Specific Relief Act, 1877, sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

Injunction to restrain disturbance.

(*a*) if the easement is actually disturbed—when compensation for such disturbance might be recovered under this chapter :

(*b*) if the disturbance is only threatened or intended—when the act threatened or intended must necessarily, if performed, disturb the easement.

Notes.—It is not every interference with the right of easement that gives a right ... pensation or for injunction there must ... o=A I R. (1926) A 764. Where it ... defendant would block the plaintiff's ... comfort, and where, as a matter of ... *eld*, that there has been disturbance within the meaning of section 33, that the injury is one for which damages would not afford adequate relief and that the case was one in which an injunction ought to be granted. 7 S. L. R. 21=20 Ind. Cas. 544 It is only the inconvenience to the public that justifies restriction of a right of way. 2 Lah L J 49 The word "when" in clause (a) must be construed to mean 'when and where". An injunction to restrain the disturbance of an easement of light can only be granted where substantial damage is proved to have been caused. An injunction is only an alternative within the discretion of the Court and is not an independent form of relief. A. I. R. 1929 All. 430=117 Ind. Cas. 618. Diminution of light does not by itself give a ... occupation uncomfortable ... Ind. Cas. 70. The right ... land can be acquired as an ... restrain the servient owner ... ing a wall or building close ... e decree issuing injunction ... ral terms 25 Bom L. R. 239=A I. R. 1923 Bom. 196=72 Ind Cas. 406. English principles as to granting injunctions do not apply in India, where injunction is a matter of judicial discretion and may be given in cases where the injury can not be adequately compensated ...

... cultivating lands, the decree should state that defendant's right of cultivation should extend only to such of land as will leave the plaintiff a sufficient area for grazing purposes and grant injunction if prayed for A. I R. 1925 Lah. 216=6 L. L. J. 336 =92 Ind. Cas. 403. "Disturb" in s. 35 means 'illegal obstruction." A I. R. 1935 Mad. 870.

36 Notwithstanding the provisions of section 24, the dominant owner cannot himself abate a wrongful obstruction of an easement.

Abatement of obstruction of easement.

Notes.—A person having obtained an order of injunction to remove obstruction cannot take the law into his own hands and himself remove the obstruction A. I. R. 1927 Bom. 363=29 Bom. L. R 484=28 Cr. L. J. 476=51 B. 487=101 Ind. Cas. 604.

CHAPTER V.

THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENT.

37. When, from a cause which preceeded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Extinction by dissolution of right of servient owner.

(*a*) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used ; or

(*b*) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it ; or

(*c*) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage,

Notes.—"By the civil law, the mere destruction either of the dominant or servient tenement extinguished a servitude, though it was held to revive if the house was built on the same site and of the same dimensions as before." *Gale on Easements*, p. 502. If "any alteration be made in the disposition of the dominant tenement, of such a nature as to make it incapable any longer of the perception of the particular easements the status of the dominant tenement, to which the easement was attached, and which is an inherent condition of its existence, is determined." *Gale on Easements*, p. 521. An easement of light and air for windows is not extinguished on demolition of a wall which was re-built without delay. A. I. R 1925 Bom. 3=24 Bom. L. R. 83=46 B. 448=67 Ind. Cas. 250. Raising a water spout to a height of about 2½ to 4ft. throws no additional burden on the servient tenement, so as to destroy easement. A. I. R. 1927 Lah 492 ; see also A. I. R. 1922 All. 28=44 A. 343=20 A. L. J. 202=65 Ind Cas. 643 ; 24 C W N 896=32 C. L. J. 27=58 Ind. Cas. 854 ; 58 Ind. Cas. 967.

Extinction on permanent alteration of servient heritage by superior force.

44. An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement :

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage, and the provisions of section 14 apply to such way.

Illustrations.

[illegible] o fish in a river running [illegible] and runs through C's [illegible] permanently cut off by an earthquake. A's right is extinguished.

Notes—A tenant may have a customary right or customary easement to irrigate his lands with water from his landlord's tank but where owing to natural causes the tank becomes unfit for use as an irrigation source, such right becomes extinguished under this section. 56 Ind Cas 598.

Extinction by destruction of either heritage.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Illustrations.

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

Notes—"By the civil law, the mere destruction either of the dominant or servient tenement extinguished a servitude, though it was held to revive if the house was built on the same site and of the same dimensions as before."—*Gale on Easements*, p. 502 ; A I. R. 1931 Bom 490=33 Bom. L. R. 1114.

Extinction by unity of ownership.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

Illustrations.

(*a*) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field, to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right of way is extinguished,

(*b*) The dominant owner acquires only part of the servient heritage : the easement is not extinguished, except in the case illustrated in section 41.

(*c*) The servient owner acquires the dominant heritage in connection with a third person : the easement is not extinguished.

(*d*) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages ; the easements are not extinguished.

(*e*) The joint owners of the dominant heritage jointly acquire the servient heritage ; the easement is extinguished.

(*f*) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires only one of the servient heritages The easement is not extinguished

(*g*) A has a right of way over B's road B dedicates ths road to the public. A's right of way is not extinguished.

Notes—A man can not acquire a right of easement upon his own land, and possibly this may extend also to joint co-sharership of land. In order to extinguish an easement, it is necessary that some person should be entitled to absolute ownership of the whole of the dominant and servient tenements, so that a mere acquisition of qualified ownership on the one hand or partial ownership on the other would not extinguish an easement. A W N. 1887, 260. The unity of the dominant and servient estates in the same person extinguishes the easement appurtenant to the dominant estate. A. I. R. 1923 Cal. 8=36 C L. J. 161=70 Ind. Cas. 663=50 C. 356 ; see also A. I. R. 1923 Lah. 249.

Extinction by non-enjoyment. **47.** A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years.

A discontinuous easement is extinguished when for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner ; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner :

Provided that, if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Indian Registration Act, 1877* a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(*a*) where the cessation is in pursuance of a contract between the [illegible] in co-ownership, and one of the [illegible] eriod ; or

([illegible]) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

A has, as annexed to this house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expires,

* Act III of 1877 was repealed and re-enacted by the Indian Registration Act 1908 (XVI of 1908)

A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

Notes—This section comes into operation only where an easement has been acquired under section 15, 9 Bom. L. R. 1101. Where the easement in question is not an easement of necessity, but is an ordinary easement, it is liable to be extinguished by non-user for more than 20 years. 45 Bom. 80=22 Bom L. R. 415=57 Ind. Cas. 143. Once the existence of an easement is shown, it is for the other party to show under this section that it interrupted that easement more than 20 years ago or that the plaintiff rendered its use impossible. 31 Ind. Cas. 982. An easement is not extinguished, when the cessation is in pursuance of a contract between the dominant and servient owners. 34 P. L. R. 1918=45 Ind. Cas. 618. A mere diversion is not obstruction. 13 A. L. J. 821. When an easement right to the water in a stream is not enjoyed for 20 years continuously, the right is extinguished. A. I. R. 1923 Mad 674=18 M. L. W. 404=73 Ind. Cas. 66. Where a prescriptive right to light and air lost through abandonment, depends on the intention of the parties to be gathered from the circumstances and the interval of non-user. 49 Ind. Cas. 752.

Extinction of accessory rights.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section 47. The right of way is also extinguished.

Suspension of easement.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

Notes.—According to ss. 49 and 51, an easement suspended for more than 20 years would be destroyed. So where the servient owner was in possession both of the dominant and servient heritages for a period of 20 years, the right of easement (a right of way) becomes extinguished. (1913) M. W. N. 95=16 Ind. Cas 375

Servient owner not entitled to require continuance.

50. The servient owner has no right to require that an easement be continued, and, notwithstanding the provisions of section 26, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Compensation for damage caused by extinguishment.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Illustration.

A, in [illegible]
diversion [illegible]
fills up. A [illegible]
B's land is [illegible]
by the flooding. It is proved that A gave B a month's notice [illegible]
abandon the easement, and that such notice was sufficient to enable B without unreasonable expense, to have prevented the damage. The suit must be dimissed.

Notes.—Servient owner can not insist on the continuance of easement. 46 Ind. Cas. 67; 20 Ind. Cas. 815=17 C. W. N. 1066=18 C. L. J. 131; 4 P. L. T. 81=2 P. 110=(1922) Pat. 305 4 P. L. T. 81.

Revival of easements.

51. An easement extinguished under section 45 revives (*a*) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (*b*) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site; and (*c*) when the destroyed heritage is a dominant building and before twenty years have expired, such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage

An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the causes of suspension are removed before the right is extinguished under section 47.

Illustration

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

se (*b*) cannot be so construed as to mean
m L R 352. An easement suspended
, 16 Ind Cas. 375. Where the dominant tenement has been rebuilt the relief to which the dominant owner is entitled is still further limited by the terms of this section. There must be no greater burden imposed on the servient tenement 33 Ind Cas. 615 An easement once extinguished cannot be revived by any act on the part of dominant owner A I R. 1930 Mad. 789=1930 M W N. 20=127 Ind Cas 646. Where right to take water from a well on plaintiff's land was extinguished by non-user, but subsequently he allowed defendant to repair the well and use the water, *held* plaintiff must be deemed to have regranted the easement and he cannot question defendant's right. 45 B 80

CHAPTER VII

LICENSES.

"License" defined

52. Where one person grants to another, or to definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

Notes—"A dispensation or license properly passes no interest nor alters or transfers any property in anything but only makes an action lawful which without it had been unlawful. A license to go beyond the seas, to hunt in a man's park to come into his house, are only actions which without license had been unlawful. But a license to hunt in a man's park and carry away the deer killed to his own use, to cut down a tree in a man's ground and to carry it away the next day after to his own use, are licenses as to the acts of hunting and cutting down the tree; but as to the carring away of the deer killed and tree cut down, they are grants." *Thomas* v. *Sorrel*, (1679) Vough 351; see also *Musket* v *Hill*, (1839) 5 Bing. N. C. 694. Both the benefit and the burden of an easement are annexed to land. *Hastings* v. *North Eastern Railway*, (1898) 2 Ch 674; (1899) 1 Ch 650; (1900) C 260 But a mere license when it is not coupled with a grant is personal to both grantor and grantee *Gale on Easement*, p 886; see also 38 A 171=32 Ind. Cas. 346=14 A L J. 137; 13 B. 397; 16 M. 304, 7 Bom L R. 352=8 Bom L R. 310. An action by a license for infringement of license against a stranger is not maintainable. *Hill* v *Taper*, 2 H. & C 121; *Stockpost* v. *Potter*, 3 H & C. 300 A license is not generally assignable. *Musket* v. *Hill*, 5 Bing. N. C 694; *Metcalfe* v. *Westaway*, 34 L J C P 43; see also 84 Ind Cas 284=(1921) All. 825. A license is not annexed to property nor is it transferable or heritable right, but is a right purely personal between grantor and licensee. A. I. R 1931 Mad. 216=1930 M. W. N. 1242=131 Ind Cas. 175; see also 86 Ind. Cas 688 (F. B)=48 M. 568;

38 A. 178=14 A. L. J. 137=32 Ind. Cas. 346. Lease is not a license 57 C. 655=A. I R. 1930 Cal. 739; see also A. I. R. 1933 All. 911. Permission for the use of as *sehan* is a license. A. I. R. 1934 All. 836. If exclusive possession is given to the holder, though it is subject to certain reservation, it is a lease; if mere use of the property in a certain way is given, while permission remains with the owner, then it is a license. A. I. R. 1930 Bom. 165=32 Bom. L. R. 332; see also A. I. R. 1930 All. 338=123 Ind Cas. 377; 23 N. L. R. 192=A. I. R 1928 Nag 87=107 Ind. Cas. 522; A. I. R. 1927 All 633; A. I. R. 1927 Bom. 240=29 Bom L. R. 312=101 Ind. Cas 393; A. I R. 1927 Bom. 115=51 B. 274=30 Bom. L. R. 78; 25 Bom L. R. 84=88 Ind. Cas 316. Where transferee is allowed to remove sand and earth from transferor's land, the agreement is sale of interest in immovable property. 139 Ind. Cas. 870=56 M. 169=63 M. L. J. 587=A. I. R. 1932 Mad. 734.

Who may grant license.

53. A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

Notes.—A beneficial license to be exercised upon land may be granted without deed and without writing. *Taylor* v. *Watters*, 7 Taunt 374. Transfers of different rights in two properties may be simultaneous and yet distinct, *e g*, transfer of a mill and a license to use the site on which it is built. 12 N. L. R. 75=34 Ind. Cas. 71.

Grant may be express or implied.

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

Notes.—A licence is not implied by law to a purchaser of goods (though sold under an execution of a distress), to enter upon the premises of the former owner and take them away, although they have v. *Morris*, 8 M & W 483; 11 L J. Ex. 1 grant of a mere license need not be in with a grant of immovable property or of for which writing and registration are compulsory; the grant of property exists independently of the license, and where writing and registration are compulsory; the grant, if unwritten and unregistered, would be void and the license stripped of its accompaniment, would remain a mere license. 34 Ind. Cas. 371; see also A. I. R. 1925 All 203, 31 Bom L. R. 1310.

Accessory licenses annexed by law.

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

Illustration.

A sells the trees growing on his land to B B is entitled to go on the land, and take away the trees

Notes.—A licensee is not a trespasser until the license is revoked and he has a reasonable time after the withdrawal of the license, to go on the land and to remove goods which he has been licensed to place there. *Cornish* v *Steeble*, (1870) L. R. 5 C. P. 334; *Mellor* v. *Watkins*, (1874) L. R. 9 Q B 409; *Wilson* v. *Tavoner*, (1901) 1 Ch. 578 A parol devise of land reserved to the landlord "all the hedges, trees, thorn, bushes, fences, with lop and top." *Held*, that such reservation operated as a license to enter the land for the purpose of cutting and carrying away the tree. *Hewit* v. *Isham*, 7 Ex 77. A license to live for generation must be presumed to permit all enjoyments of life by the licensee without restriction. A licensee has a right to slaughter cows at his residence. A I R 1930 All 753=125 Ind. Cas. 14.

License when transferable.

56 Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

Illustrations.

...'s field whenever he pleases. The right is ... B. The right cannot be transferred.

... to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein, and remove grain therefrom.

Notes—A license is not generally assignable by the licensee. *Muskett* v. *Hill*, (1839) 5 Bing. N. C. 694; *Metcalfe* v. *Westaway*, 34 L J C P 43; see also A. I R 1928 All. 659, A. I. R. 1927 Oudh 314; A I R. 1927 Bom 240; A. I R. 1926 Mad 218; 84 Ind. Cas. 284; A. I. R. 1934 All 336

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license, likely to be dangerous to the person or property of the licensee of which the grantor is, and the licensee is not, aware.

Grantor's duty to disclose defects.

Notes—Under s. 57 the licensor is bound to disclose any defect in the property likely to be dangerous to the licensee of which licensor was aware but the licensee was not A. I R 1927 Bom. 115=51 B 274=29 Bom L R. 210. The grantor of a license is under an obligation to put the licensee in a position to enjoy the license. A. I. R 1923 Cal. 49=36 C L J 271=72 Ind. Cas 270.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee

Grantor's duty not to render property unsafe.

Grantor's transferee not bound by license.

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.

Notes—A license is determined by an assignment of the subject-matter in respect of which the privilege is to be enjoyed *Coleman* v *Foster*, 1 H & N. 37, see also ...'y v. *Henderson*, 17 Q B 574; *Richards* v. *Tucker*, (1907) 2 Ch 191. A licensee ... of time acquire right adverse to that of the licensor 44 A 726 A license is a personal right and is not annexed to property and cannot, unless expressly intended, be exercised by the licensee's servant or agents. A I. R. 1931 Mad. 216=1930 M. W N 1242, see also A I R. 1930 Oudh 203=7 O W. N. 468; A. I. R. 1923 All 140=44 A. 726=77 Ind Cas 140. Vendee from licensor cannot revoke an irrevocable license. A. I. R 1927 Oudh 206; see also A I. R. 1926 All 714; A. I. R 1934 All. 517; 74 Ind. Cas 369 Section 59 does not apply where one of two joint licensors transfers his interest in the property to the other A I. R 1927 All. 197=98 Ind Cas 814. When the grantor of a license dies, his heir can treat the licensee as a trespasser without giving notice of revocation of the license 68 Ind Cas 107=18 N. L. R. 76; but see A. I. R. 1931 Oudh 364.

License when revocable.

60. *A license may be revoked by the grantor, unless*—

(*a*) it is coupled with a transfer of property and such transfer is in force:

(*b*) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

Notes.—If a license was granted by the zemindar to the predecessors in title *of the judgment-debtor, and they acting upon that license*, built a house, which was of a permanent character the Zemindar could not revoke the license and seek ... 133 Clause (*b*) ... to execute works ... on of such works but not to a case where a licensor merely gives a license to occupy a house already existing. 5 Ind. Cas. 175. A *katcha*-thatched house may be "a of a permanent character." 3 A. L. J. 765=28 A. 741=A. W. N. 1906, 216.

principle of this section applies to places where this Act is not in force. 8 A. 69=A. W. N. 1884. 3 A license to be exercised upon land for twenty-one years, granted for a valuable consideration and acted upon, cannot be countermanded. *Walter* v. *Harrison*, 4. M & W. 538. An auctioneer who is employed to sell goods on the premises of the proprietor has not such an interest in the goods as will make a license to enter on the premises irrevocable. *Taplin* v. *Florence*, 10 C. B. 744. A parol license, after it is executed at the expense of the grantee is not countermandable by the grantor. *Liggins* v *Inge*, 5 M. & P. 712. A licensee is not liable to ejectment for denying the title of the licensor. 75 Ind. Cas 596=1923 All. 403. A license cannot be revoked where the licensee has erected certain buildings of a permanent nature on the land 12 A L. J. 455 ; see also 48 Ind. Cas. 723 ; 91 Ind. Cas 1031=13 O. L J. 170. Where the grantee acting on the license, executes a work of a permanent character and a suit for ejectment is brought by the grantor's heirs, he cannot be ejected 94 Ind Cas 923. Where a permanent structure has been erected by the transferor's license his transferee has no right to revoke the license. 97 Ind. Cas. 337 ; see also 47 Ind Cas 166. A. I. R. 1927 All. 342=100 Ind Cas. 479 ; A I. R. 1926 Nag. 376=22 N. L R. 162=94 Ind Cas. 923 ; 84 Ind. Cas. 284=A. I R 1924 All. 825 ; A I. R. 1925 All. 203=78 Ind. Cas. 215 ; A. I. R. 1930 Bom 70 ; A I R. 1930 Bom 84=53 B 792. A I.R. 1929 Nag. 269 ; A. I. R. 1929 Nag. 596. A. I. R. 1927 Oudh 206 ; A I. R. 1926 nd. Cas. 215 ; A. I R. 1934 All. 517 ; A. I. R. A. I. R. 1932 Oudh 264 ; A. I. R. 1931 Oudh not forfeit his license by merely denying the 2=39 A. 621. Clause(a) does not necessarily in the limited sense of a transfer as defined in the Transfer of Property Act. A. I. R. 1927 Bom 240=29 Bom. L. R. 312. A mere license is revokable at the will of the licensor unless it is coupled with a grant 30 P. L. R. 749=120 Ind. Cas. 673. Transfer by licensor of ownership does not revoke license. A I. R 1924 Nag. 254=20 N. L. R. 60=79 Ind. Cas. 173. The Court cannot in view of s. 60(b) allow a licensor, on making compensation, to revoke an irrevokable license. A. I. R. 1927 All 197=98 Ind. Cas. 614. An administrator has power to revoke a license. A. I. R. 1934 Rang. 291.

Revocation express or implied.

61. The revocation of a license may be express or implied.

Illustrations.

(*a*) A, the owner of a field grants a license, to B to use a path across it. A, with intent to revoke the licence, locks a gate across the path. The license is revoked

(*b*) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

Notes—The locking of a gate, through which parol leave has been given to pass is of itself a sufficient notice of revocation of the leave. *Hyde* v. *Graham*, 1 H & C. 593. A license is determined by an assignment of the subject-matter in respect of which the privilege is to be enjoyed. *Coleman* v. *Fraser*, 1 H. & H. 37. *Lord Abinger* C. B. said : "A mere parol land of another does not bind the grantor, possession in the land to a third person. I never heard it supposed that if a man out of kindness to a neighbour allows him to pass over his land, the transferee of that land is bound to do so likewise.

License when deemed revoked

62. A license is deemed to be revoked—

(*a*) when from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license ;

(*b*) when the licensee releases it, expressly or impliedly, to the grantor or his representative ;

(*c*) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act and the period expires, or the condition is fulfilled ;

(*d*) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right ;

(*e*) where the licensee becomes entitled to the absolute ownership of the property affected by the license :

(*f*) where the license is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable :

(*g*) where the license is granted to the licensee as holding a particular office, employment, or character, and such office, employment or character ceases to exist.

(*h*) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract,

, when the interest or right to which

a license granted by him may co-exist

iction against the licensor for breach

license. *Wood* v. *Ledbitter*, 14 L. J. Ex. 161 distinguished *Keneson* v *Smith*, 66 L. J. Q. B. 762. License can be revoked at the end of the period with any notice. A. I. R. 1932 Nag. 36=14 N. L. J. 171=136 Ind. Cas 884.

63. *Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.*

Licensee's rights on revocation.

Notes.—Although a license to place articles on the property of another may be revokable at any moment, the licensee is entitled to notice of the revocation, and to a reasonable time for the removal of the articles. *Mellor* v. *Watkins*, L R. 9 Q. B. 400 A allowed B to stack timber upon a wharf adjoining the premises let to him by A, and the rent was paid partly in respect of this privilege. *Held* that such license might also be considered as continued by C, and that it could not be revoked without allowing B reasonable time to remove the timber. *Cornish* v *Stubbs*, 39 L J C. P. 202. Where a party on the 28th October, sold a rick of hay on his land, with condition that it might remain there, and be carried away from time to time by the purchaser up to Lady day next · *Held* that this license could not be revoked, *Wood*

restriction as to the

, there is no warrant

manner, 18 A L. J.

ocation is generally

necessary. A. I. R. 1932 P C 108 (P C)=61 M. L J 958.

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

Licensee's rights on eviction

Notes—A suit for ejectment of a licensee is maintainable without notice to quit even though the licensee has erected huts on the land 27 C. L. J. 523=45 Ind. Cas. 317

THE INDIAN ELECTRICITY ACT, 1910.

ACT NO IX OF 1910.

RECEIVED THE G G.'s ASSENT ON THE 18TH MARCH 1910

An Act to amend the law relating to the supply and use of electrical energy

WHEREAS it is expedient to amend the law relating to the supply and use of electrical energy ; It is is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent, and commencement.

1. (1) This Act may be called the Indian Electricty Act, 1910.

(2) It extends to the whole of British India inclusive of British Baluchistan and the Santhal Parganas; and

(3) It shall come into force on such date as the Governor General in Council may, by notification in *the Gazette of India*, direct in this behalf

Definitions.

2 In this Act, expressions defined in the Indian Telegraph Act, 1885,* have the meanings assigned to them in that Act, and, unless there is anything repugnant in the subject or context,—

(*a*) "aerial line" means any electric supply line which is placed above ground, and in the open air:

(*b*) "area of supply" means the area within which alone a licensee is for the time being authorized by his license to supply energy:

(*c*) "consumer" means any person who is supplied with energy by a licensee, or whose premises are for the time being connected for the purposes of a supply of energy with the works of a licensee:

(*d*) "daily fine" means a fine for each day on which an offence is continued after conviction therefor:

(*e*) "distributing main" means the portion of any main with which a service-line is or is intended to be, immediately connected:

(*f*) "electric supply-line" means a wire, conductor or other means used for conveying, transmitting or distributing energy, together with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing such energy:

(*g*) [illegible] ...itted, supplied [illegible]

(*h*) [illegible]

(*i*) "main" means any electric supply line through which [illegible] intended to be, supplied by a licensee to the public:

(*j*) "prescribed" means prescribed by rules made under this Act:

(*k*) "public lamp" means an electric lamp used for the lighting of any street:

"(*l*) "service line" means any electric supply line through which energy is, or is intended to be, supplied by a licensee,

(*i*) to a single consumer either from a distributing main or immediately from the licensee's premises, or

(*ii*) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point of the distributing main."†

(*m*) [illegible] open spac[illegible] way, and [illegible]

(*n*) "works" includes electric supply lines and any [illegible] to effect the objects of a [illegible]

[illegible] tion 2. Supply lines for [illegible] A. I. R. 1935 Lah. 510.

PART II.

SUPPLY OF ENERGY.

Licenses.

Grant of licenses.

3. (1) The Local Government may, on application made in the prescribed form and on payment of the prescribed fee (if any), grant to any person a license to supply

* Act XIII of 1885.

† The words within quotations have been substituted by Act I of 1922.

energy in any specified area, and also to lay down or place electric supply-lines for the conveyance and transmission of energy,—

(a) where the energy to be supplied is to be generated out-side such area, from a generating station situated outside such area to the boundary of such area, or

(b) where energy is to be conveyed or transmitted from any place in such area to any other place therein, across an intervening area not included therein, across such area.

(2) In respect of every such license and the grant thereof, the following provisions shall have effect, namely :—

[illegible] license under this Part shall publish a notice [illegible] manner and with the prescribed particulars, [illegible]—

[illegible] nent with reference [illegible] is received before the expiration of three months from the date of the first publication of such notice as aforesaid ; and

(ii) until, in the case of an application for a license for an area including the whole or any part of any cantonment, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for naval or military purposes, the Local Government has ascertained that there is no objection to the grant of the license on the part of the "Engineer-in Chief, Army Head Quarters, India" ;*

(b) where an objection is received from any local authority concerned, the Local Government shall, if in its opinion the objection is insufficient, record in writing, and communicate to such local authority its reason for such opinion ;

(c) no application for a license under this Part shall be made by any local authority except in pursuance of a resolution passed at a meeting of such authority held after one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given ;

(d) a license under this Part—

(i) may prescribe such terms as to the limits within which, and the conditions under which, [illegible], and as to the limits [illegible], and generally as to suc[illegible]

(ii) save in cases in which under section 10, clause (b), the provisions of sections 5 and 7, or either of them, have been declared not to apply, every such license shall declare whether any generating station to be used in connection with the undertaking shall or shall not form part of the undertaking for the purpose of purchase under section 5 or section 7 ;

(e) the grant of a license under this Part for any purpose shall not in any way hinder or restrict the grant of a license to another person within the same area of supply for a like purpose ;

(f) the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every license granted under this Part, save in so far as they are expressly added to, varied or excepted by the license, and shall, subject to any such additions, variations, or exceptions which the Local Government is hereby empowered to make, apply to the undertaking authorized by the license :

Provided that, where a license is granted in accordance with the provisions of clause IX of the Schedule for the supply of energy to other licensees for distribution by them, then, in so far as such license relates to such supply, the

* The words within quotations have been substituted by Act 37 of 1925

provisions of clauses IV, V, VI, VII, VIII and XII of the Schedule shall not be deemed to be incorporated with the license.

* * * * * *

Revocation or amendment of licenses.

4. (1) The Local Government may, if in its opinion the public interest so requires, revoke a license in any of the following cases, namely :—

(*a*) where the licensee, in the opinion of the Local Government, makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act ;

(*b*) where the licensee breaks any of the terms or conditions of his license the breach of which is expressly declared by such license to render it liable to revocation ;

(*c*) where the licensee fails, within the period fixed in this behalf by his license or any longer period which the Local Government may substitute therefor by order under sub section (3), clause (*b*), and before exercising any of the powers conferred on him thereby in relation to the execution of works,—

(*i*) to show, to the satisfaction of the Local Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license, or

(*ii*) to make the deposit or furnish the security required by his license ;

(*d*) where the licensee is, in the opinion of the Local Government, unable, by reason of his insolvency, fully and efficiently to discharge the duties and obligations imposed on him by his license.

(2) Where the Local Government might, under sub-section (1), revoke a license, it may, instead of revoking the license, permit it to remain in force subject to such further terms or conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon, and be observed by, the licensee, and shall be of like force and effect as if they were contained *in the license.*

(3) Where in its opinion the public interest so permits, the Local Government may, on the application or with the consent of the licensee, and if the licensee is not a local authority, after consulting the local authority (if any) concerned,—

(*a*) revoke a license as to the whole or any part of the area of supply upon such terms and conditions as it thinks fit, or

(*b*) make such alterations or amendments in the terms and conditions of a license, including the provisions specified in section 3, sub-section (2), clause (*f*), as it thinks fit.

Provisions where license of licensee, not being a local authority is revoked

5. Where the Local Government revokes, under section 4, sub section (1), the license of a licensee, not being a local authority, the following provisions shall have effect, namely :—

(*a*) the Local Government shall serve a notice of the revocation upon the licensee, and, where the whole of the area o[illegible]
for which a single local authority is constituted, [illegible]
and shall in the notice fix a date on which the [illegible]
on and with effect from that date, all the powe[illegible]
under this Act shall absolutely cease and determine ;

(*b*) where a notice has been served on a local authority under clause (*a*), the local authority may, within three months after the service of the notice, and with the written consent of the Local Government, by notice in writing, require the licensee to sell, and thereupon the licensee shall sell, the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of licensee suitable to, and used by him for, the purposes

* Certain words after this repealed by Act 38 of 1920 have been omitted.

of the undertaking, other than a generating station declared by the license not to form part of the undertaking for the purpose of purchase, such value to be, in case of difference or dispute, determined by arbitration :

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair market value at the time of purchase, due regard being had to the nature and condition for the time being of su h lands, buildings, works, materials and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for im mediate working, and to the suitability of the same for the purposes of the undertaking, but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking, or of any similar considerations ;

(*c*) where no purchase has been effected by the local authority under [illegible] is willing to purchase the undertaking, the [illegible] ıks fit, with the consent of the licensee, or with- [illegible] case the price is not less than that for which the local authority might have purchased the same, require the licensee to sell, and thereupon the licensee shall sell, the undertaking to such other person ;

(*d*) where no purchase has been effected under clause (*b*) or clause (*c*) within such time as the Local Government may consider reasonable, or where the whole of the area of supply is not included in the area for which a single local authority is constituted, the Local Government shall have the option [illegible] and, if the Local Government elects to [illegible] ıe undertaking to the Local Government upon [illegible] ...ose set forth in clause (*b*) ;

(*e*) where a purchase has been effected under any of the preceding clauses,—

(*i*) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking .

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking ; and

(*ii*) the revocation of the license shall extend only to the revocation of the rights, powers, authorities, duties and obligations of the licensee from whom the undertaking is purchased, and, save as aforesaid, the license shall remain in full force, and the purchaser shall be deemed to be the licensee .

Provided that, where the Locol Government elects to purchase under clause (*d*), the license shall, after purchase, in so far as the Local Government is concerned, cease to have any further operation ,

(*f*) where no purchase has been effected under any of the foregoing clauses the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit :

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same become exercisable, the Local Government may forthwith cause the works of the licensee in, under, over, along or across any street to be removed and every such street to be reinstated, and recover the cost of such removal and reinstatement from the licensee ;

(*g*) if the licensee has been required to sell the undertaking, and if the sale has not been completed by the date fixed in the notice issued under clause (*a*), the purchaser may, with the previous sanction of the Local Government, work the undertaking pending the completion of the sale.

Provisions where license of local authority is revoked.

6. (1) Where the Local Government revokes the license of a local authority under section 4, sub section (1), and any person is willing to purchase the undertaking, the Local Government may, if it thinks fit, require the local authority to sell, and thereupon the local authority shall sell, the undertaking to such person on such terms as the Local Government thinks just

(2) Where no purchase has been effected under sub-section (1), the licensee shall have the option of disposing of all lands, buildings, works, materials and plant b longing to the undertaking in such manner as he may think fit :

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same became exercisable, the Local Government may forthwith cause the works of the licensee in, under, over, along, or acro-s any street to be removed and every such street to be reinstated, and recover the cost of such removal and reinstatement from the licensee.

Purchase of undertaking.

7. (1) Where a license has been granted to any person not being a local authority, and the whole of the area of supply is included in the area for which a single local authority is constituted, the local authority shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period, not exceeding twenty years, as shall be specified in this behalf in the license, have the option of purcasing the undertaking, and, if the local authority with the previous sanction of the Local Government, elects to purchase, the licensee shall sell the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking, other than a generating station declared by the license not to form part of the undertaking for the purpose of purchase, such value to be, in case of difference or dispute, determined by arbitration :

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair market-value at the time of purchase due regard being had to
dings, works,
circumstance
working, and

Provided
percentage, if any, not exceeding twenty per centum on that value as may be specified in the license, on account of compulsory purchase.

(2) Where—

(a) the local authority does not elect to purchase under sub-section (1), or

(b) the whole of the area of supply is not included in the area for which a single local authority is constituted, or

generating station to two or
local authority, and has been

the Local Government shall have the like option upon the like terms and conditions.

(3) Where a purchase has been effected under sub section (1) or sub-section (2),—

(a) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking :

Provided that any such
to the purchase money in

(b) save as aforesaid,
ser shall be deemed to be the licensee :

Provided that where the Local Government elects to purchase under sub-section (2), the license shall, after purchase, in so far as the Local Government is concerned, cease to have any further operation.

(4) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the licensee by the local authority or

the undertaking until the expiration of the next subsequent period referred to in sub-section (1) upon such terms and conditions as may be stated in such agreement.

Provisions where no purchase and license revoked with consent of licensee.

8. Where, on the expiration of any of the periods referred to in section 7, sub section (1), neither a local authority nor the Local Government purchases the undertaking, and *the license is, on the application or with the consent, of the licensee, revoked, the licensee* shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit:

Provided that, if the licensee does not exercise such option within a period of six months, the Local Government may proceed to take action as provided in section 5, clause (*f*), proviso

Licensee not to purchase, or associate himself with other licensed undertakings or transfer his undertakings

9. (1) The licensee shall not, at any time, without the previous consent in writing of the Local Government, acquire, by purchase or otherwise, the license or the undertaking of, or associate himself so far as the business of supplying energy is concerned with, any person supplying, or intending to supply, energy under any other license, and, before applying for such consent, the licensee . the application to every local also in the area or district upply, energy:

Provided that nothing in this sub-section shall be construed to require the consent of the Local Government for the supply of energy by one licensee to another in accordance with the provisions of clause IX of the Schedule.

(2) The licensee shall not at any time assign his license or transfer his undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise, without the previous consent in writing of the Local Government.

(3) Any agreement relating to any transaction of the nature described in sub-section (1) or sub section (2), unless made with, or subject to, such consent as aforesaid, shall be void

General power for Government to vary terms of purchase.

10. Notwithstanding anything in sections *5, 7 and 8, the Local Government may** in any *license to be granted under this Act,*—

(*a*) vary the terms and conditions upon which, and the periods on the expiration of which, the licensee shall be bound to sell his undertaking, or

(*b*) direct that, subject to such conditions and restrictions (if any) as it may think fit to impose, the provisions of the said sections or any of them shall not apply.

Annual accounts of licensee

11. (1) Every licensee shall, unless expressly exempted from the liability by his license, or by order in writing of the Local Government, prepare and render to the Local Government or to such authority as the Local Government may appoint in this behalf, on or before the prescribed date in each year, an anuual statement of accounts of his undertaking made up to such date, in such form, and containing such particulars, as may be prescribed in this behalf.

(2) The licensee shall keep copies of such annual statement at his office, and sell the same to any applicant at a price not exceeding five rupees per copy.

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* Certain words after this repealed by Act 38 of 1920 have been omitted.

Works.

Provisions as to the opening and breaking up of streets, railways and tramways.

12. (1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply, without that area—

(*a*) open and break up the soil and pavement of any street, railway or tramway;

(*b*) open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(*c*) lay down and place electric supply lines and other works;

(*d*) repair, alter or remove the same; and

(*e*) do all other acts necessary for the due supply of energy.

(2) Nothing contained in sub-section (1) shall be deemed to authorize or empower a licensee, without the consent of the local authority or of the owner and occupier concerned, as the case may be, to lay down or place any electric supply-line or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, whereover or whereunder any electric supply line or work has not already been lawfully laid down or placed by such licensee:

Provided that any support of an aerial line or any stay or strut required for the sole purpose of securing in position any support of an aerial line may be fixed on any building or land, or, having, been so fixed may be altered, notwithstanding the objection of the owner or occupier of such building or land, if the District Magistrate or, in a Presidency-town or Rangoon, the Commissioner of Police by order in writing so directs:

Provided, also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town or Rangoon, the Commissioner of Police may, by order in writing direct any such support, stay or strut to be removed or altered.

(3) When making an order under sub-section (2), the District Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(4) Every order made by a District Magistrate or a Commissioner of Police under sub-section (2) shall be subject to revision by the Local Government.

(5) Nothing contained in sub-section (1) shall be deemed to authorize or empower any licensee to open or break up any street not repairable by the Government or a local authority, or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorized to break up by his license, without the written consent of the person by whom the street is repairable, or of the person for the time being entitled to work the railway or tramway, unless with the written consent of the Local Government:

Provided that the Local Government shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as the Local Government may direct, and within such period as the Local Government may fix in this behalf, to the person above referred to, and until all representations or objections received in accordance with the notice have been considered by the Local Government.

Notes.—The ordinary rule is that whoever owns the site is the owner of everything up to the sky and down to the centre of the earth, and such owner can therefore, object to the laying of electric wire on his land although more than 30 feet above land. District Magistrate cannot grant permission to an electric company to lay electric line over the land of a person. A. I. R. 1929 Lah. 226=114 Ind. Cas. 692.

13 (1) Where the exercise of any of the powers of a licensee in relation to the execution of any works involves the ... in, under, over, along, ... canal, or waterway, the ...

(*a*) not less than one month before commencing the execution of the works (not being a service line immediately attached, or intended to be immediately attached, to a distributing main, or the repair, renewal or amendment of existing works of which the character or position is not to be altered), the licensee shall serve upon the person responsible for the repair of the street or part of a street (hereinafter in this section refered to as "the repairing authority") or upon the person for the time being entitled to work the railway, tramway, canal, or waterway (hereinafter in this section referred to as "the owner"), as the case may be, a notice in writing describing the proposed works, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally and intimating the manner in which, and the time at which, it is proposed to interfere with or alter any existing works, and shall, upon being required to do so by the repairing authority or owner, as the case may be, from time to time give such further information in relation thereto as may be desired ;

(*b*) if the repairing authority intimates to the licensee that it disapproves of such works, section or plan, or approves thereof subject to amendment, the licensee may, within one week of receiving such intimation, appeal to the Local Government, whose decision, after considering the reasons given by the ...

... writing of its approval ... t shall be deemed to have approved of the works, section and plan, and the licensee, after giving not less than forty eight hours' notice in writing to the repairing authority, may proceed to carry out the works in accordance with the notice and the section and plan served under clause (*a*) ;

(*d*) if the own r disapproves of such works, section or plan, or approves thereof subject to amendment, he may, within three weeks after the service of the notice under clause (*a*), serve a requisition upon the licensee demanding that any question in relation to the works or to compensation, or to the obligations of the owner to others in respect thereof, shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration ;

(*e*) where no requisition has been served by the owner upon the licensee under clause (*d*), within the time named, the owner shall be deemed to have approved of the works, section and plan, and in that case, or where after a requisition for arbitration the matter has been determined by arbitration, the ... , be executed accord- ... modifications as may ... een the parties ,

(*f*) where the works to be executed consist of the laying of any underground service-line immediately attached, or intended to be immediately attached, to a distributing main, the licensee shall give to the repairing authority or the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works ;

(*g*) where the works to be executed consist of the repair, renewal or amendment of existing works of which the character or position is not to be altered, the licensee shall, except in cases of emergency, give to the repairing authority, or to the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works, and, on the expiry of such notice, such works shall be commenced forthwi h and shall be carried

on with all reasonable despatch, and, if possible, both by day and by night until completed.

(2) Where the licensee makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

(3) Notwithstanding anything in this section, the licensee may, in case of emergency due to the break-down of an underground electric supply-line, after giving notice in writing to the repairing authority or the owner, as the case may be, of his intention to do so, place an aerial line without complying with the provisions of sub-section (1):

Provided that such aerial line shall be used only until the defect in the underground electric supply-line can be made good, and in no case (unless with the written consent of the Local Government) for a period exceeding six weeks, and shall be removed as soon as may be after such defect is removed.

Alteration of pipes or wires.

14. (1) Any licensee may alter the position of any pi[illegible]e (not forming, in a case where the licensee is not a local authority, part of [illegible] wire under or over any place which [illegible] such pipe or wire is likely to interf[illegible] this Act; and any person may alter t[illegible] works of a licensee under or over an[illegible] supply-lines or works are likely to interfere with the lawful exercise of any powers vested in him.

(2) In any such case as aforesaid, the following provisions shall, in the absence of an agreement to the contrary between the parties concerned, apply, namely:—

(a) not less than one month before commencing any alteration, the licensee or other person desiring to make the same (hereinafter in this section referred to as "the operator") shall serve upon the person for the time being entitled to the pipe, wire, electric supply-lines or works as the case may be (hereinafter in this section referred to as "the owner"), a notice in writing, describing the proposed alteration, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally, and intimating the time when it is to be commenced, and shall subsequently give such futher information in relation thereto as the owner may desire;

(b) within fourteen days after the service of the notice, section and plan upon the owner, the owner may serve upon the operator a requisition to the effect that any question arising upon the notice, section or plan shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration;

(c) every arbitrator to whom a reference is made under clause (b) shall have regard to any duties or obligations which the owner is under, and may require the operator to execute any temporary or other works so as to avoid, as far as possible, interference therewith;

(d) where no requisition is served upon the operator under clause (b) within the time named, or where such a requisition has been served and the matter has been settled by agreement or determined by arbitration, the alteration may, upon payment or securing of any compensation accepted or determined by arbitration, be executed in accordance with the notice, section and plan and subject to such modifications as may have been determined by arbitration or agreed upon between the parties;

(e) the owner may, at any time before the operator is entitled to commence the alteration, serve upon the operator a statement in writing to the

effect that he desires to execute the alteration himself and requires the operator to give such security for the repayment of any expenses as may be agreed upon, or, in default of agreement, determined by arbitration ;

(*f*) where a statement is served upon the operator under clause (*e*), he shall, not less than forty-eight hours before the execution of the alteration is required to be commenced, furnish such security and serve upon the owner a notice in writing intimating the time when the alteration is required to be commenced, and the manner in which it is required to be made ; and thereupon the owner may proceed to execute the alteration as required by the operator ;

(*g*) where the owner declines to comply, or does not, within the time and in the manner prescribed by a notice served upon him under clause (*f*), comply with the notice, the operator may himself execute the alteration ;

(*h*) all expenses properly incurred by the owner in complying with a notice served upon him by the operator under clause (*f*) may be recovered by him from the operator.

(3) Where the licensee or other person desiring to make the alteration makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Laying of electric supply-lines or other works near sewers, pipes or other electric supply lines or works.

15. (1) Where—

(*a*) the licensee requires to dig or sink any trench for laying down any new electric supply-lines or other works, near to which any sewer, drain, water-course or work under the control of the Local Government or of any local authority, or any pipe, syphon, electric supply-line or other work belonging to any duly authorised person, has been lawfully placed, or

(*b*) any duly authorised person requires to dig or sink any trench for ... 'o which any

... hereinafter in this section referred to as "the operator"), shall, unless it is otherwise agreed upon between the parties interested or in case of sudden emergency give to the Local Government or local authority, or to such duly authorized person or to the licensee, as the case may be (hereinafter in this section referred to "as the owner"), not less than forty-eight hours' notice in writing before commencing to dig or sink the trench and the owner shall have the right to be present during the execution of the work, which shall be executed to the reasonable satisfaction of the owner.

(2) Where the operator finds it necessary to undermine, but not to alter, the position of any pipe, electric supply line, or work, he shall support it in position during the execution of the work, and before completion shall provide a suitable and proper foundation for it where so undermined.

(3) Where the operator (being the licensee) lays any electric supply line across, or so as to be liable to touch, any pipes, lines, or service-pipes or service-lines belonging to any duly-authorised person or to any person supplying, transmitting or using energy under this Act, he shall not, except with the written consent of such person and in accordance with section 34, sub-section (1), lay his electric supply lines so as to come into contact with any such pipes, lines or service-pipes or service lines.

(4) Where the operator makes default in complying with any of the provisions of this section, he shall make full compensation for any loss or damage incurred by reason thereof.

(5) Where any difference or dispute arises under this section, the matter shall be determined by arbitration.

(6) Where the licensee is a local authority, the references in this section to the local authority and to sewers, drains, water courses or works under its control shall not apply.

Streets, railways, tramways, sewers, drains or tunnels broken up to be reinstated without delay.

16. (1) Where any person, in exercise of any of the powers conferred by or under this Act, opens or breaks up the soil or pavement of any street, railway or tramway, or any sewer, drain or tunnel, he shall—

(*a*) immediately cause the part opened or broken up to be fenced and guarded;

(*b*) before sunset cause a light or lights, sufficient for the warning of passengers, to be set up and maintained until sunrise against or near the part opened or broken up;

(*c*) with all reasonable speed fill in the ground and reinstate and make good the soil or pavement, or the sewer, drain or tunnel, opened or broken up, and carry away the rubbish occasioned by such opening or breaking up; and

(*d*) after reinstating and making good the soil or pavement, or the sewer, drain, or tunnel, broken or opened up, keep the same in good repair for three months and for any further period not exceeding nine months during which subsidence continues.

(2) Where any person fails to comply with any of the provisions of sub-section (1), the person having the control or management of the street, railway, tramway, sewer, drain or tunnel in respect to which the default has occurred, may cause to be executed the work which the defaulter has delayed or omitted to execute, and may recover from him the expenses incurred in such execution.

(3) Where any difference or dispute arises as to the amount of the expenses incurred under sub-section (2), the matter shall be determined by arbitration.

Notice to telegraph-authority.

17. (1) A licensee shall, before laying down or placing, within ten yards of any part of any telegraph line, any electric supply-line or other works "(not being either service-lines"*) or electric supply lines for the repair, renewal or amendment of existing works of which the character or position is not to be altered, give not less than ten days' notice in writing to the telegraph-authority, specifying—

(*a*) the course of the works or alterations proposed,

(*b*) the manner in which the works are to be utilized,

(*c*) the amount and nature of the energy to be transmitted, and

(*d*) the extent to, and manner in, which (if at all) earth returns are to be used;

and the licensee shall conform with such reasonable requirements, either general or special, as may be laid down by the telegraph-authority within that period for preventing any telegraph-line from being injuriously affected by such works or alterations:

Provided that, in case of emergency (which shall be stated by the licensee in writing to the telegraph-authority) aris [illegible] supply lines or other works of the license[illegible] only such notice as may be possible [illegible]

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* The words within quotations have been substituted by Act I of 1922.

† Certain words after this repealed by Act I of 1922 have been omitted.

Aerial lines

18. (1) Save as provided in section 13, sub section (3), nothing in this Part shall be deemed to authorize or empower a licensee to place any aerial line along or across any street, railway, tramway, canal, or waterway unless and until the Local Government has communicated to him a general approval in writing of the methods of construction which he proposes to adopt :

Provided that the communication of such approval shall in no way relieve the licensee of his obligations with respect to any other consent required by or under this Act.

(2) Where any aerial line has been placed or maintained by a licensee in breach of the provisions of sub section (1), the Local Government may require the licensee forthwith to remove the same, or may cause the same to be removed, and recover from the licensee the expenses incurred in such removal.

(3) "Where any tree standing or lying near an aerial line, or where any structure or other object which has been placed or has fallen near an aerial line subsequently to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of energy or the accessibility of any works, a Magistrate of the first class or, in a Presidency-town or Rangoon, the Commissioner of the Police, may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit, and"*

(4) When disposing of an application under sub-section (3), the Magistrate or Commissioner of Police as the case may be, shall, in the case of any tree in existence before the placing of the aerial line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

"*Explanation.*—For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle-growth or other plant "*

Compensation for damage.

19. (1) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him, or by any one employed by him.

(2) Save in the case provided for in section 12, sub section (3), where any difference or dispute arises as to the amount or the application of such compensation, the matter shall be determined by arbitration.

Supply.

Point when supply is delivered.

"19A. For the purposes of this Act, the point at which the supply of energy by a licensee to a consumer shall be deemed to commence shall be determined in such manner as may be prescribed."*

Power for licensee to enter premises and to remove fittings or other apparatus of licensee.

"20. (1) A licensee or any person duly authorized by a licensee may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which energy is or has been supplied by him, for the purpose of—

meters, fittings, works
icensee ; or
the electrical quantity
contained in the supply , or

(c) removing, where a supply of energy is no longer required, or where the licensee is authorized to take away and cut off such supply, any electric supply-lines, "meters," * fittings work, or apparatus belonging to the licensee.

* The words within quotations have been added by Act I of 1922.

(2) A licensee or any person authorised as aforesaid may also, in pursuance of a special order in this behalf made by the District Magistrate or, in a Presidency-town or Rangoon, by the Commissioner of Police, and after giving not less than twenty-four hours' notice in writing to the occupier enter any premises to which energy is or has been supplied, or is to be supplied, by him for the purpose of examining and testing the electric-wires, fittings, works and apparatus for the use of energy belonging to the consumer.

"(3) Where a consumer refuses to allow a licensee or any person authorised as aforesaid to enter his premises in pursuance of the provisions of sub-section (1) or sub section (2), or, when such licensee or person has so entered, refuses to allow him to perform any act which he is authorised by those sub-sections to perform, or fails to give reasonable facilities for such entry or performance, the licensee may, after the expiry of twenty-four hours from the service of a notice in writing on the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer."*

Restrictions on licensee's controlling or interfering with use of energy.

21. (1) A licensee shall not be entitled to prescribe any special form of appliance for utilizing energy supplied by him, or, save as provided by section 23, sub-section (2), or by section 26, sub-section (7), in any way to control or interfere with the use of such energy:

Provided that no person may adopt any form of appliance, or use the energy . to interfere with the supply by the

.ction (1), a licensee may, with the previous sanction of the Local Government, given after consulting the local authority, where the licensee is not the local authority, make conditions not inconsistent with this Act or with his license or with any rules made under this Act, to regulate his relations with persons who are or intend to become consumers, and may with the like sanction given after the like consultation add to or alter or amend any such conditions; and any conditions made by a licensee without such sanction shall be null and void:

Provided that any such conditions made before the 23rd day of January 1922 shall, if sanctioned by the Local Government on application made by the licensee before such date as the Local Government may, by general or special order, fix in this behalf, be deemed to have been made in accordance with the provisions of this sub-section.

(3) The Local Government may, after the like consultation, cancel any condition or part of a condition previously sanctioned under sub-section (2) after giving to the licensee not less than one month's notice in writing of its intention so to do."*

(4) Where any difference or dispute arises as to whether a licensee has prescribed any appliance or controlled or interfered with the use of energy in contravention of sub section (1), the matter shall be either referred to an Electric Inspector, and decided by him or, if the licensee or consumer so desires, determined by arbitration.

Obligation on licensee to supply energy.

22. Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is

o a corresponding supply:
entitled to demand, or to continue to
energy for any premises having a separate
e licensee to pay to him such minimum

* The words within quotations have been added by Act I of 1922.

annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined, in case of difference or dispute by arbitration.

N ... for failure to supply energy on ... Cas 537 Before a consumer can ... substitution of an old one he *must put in a fresh requisition in writing.* A. I. R. *1925 Bom. 120*=49 B. *182*=26 Bom. L. R. 1206=85 Ind. Cas. 186.

23. (1) A licensee shall not, in making any agreement for the supply of energy, show undue preference to any person, but may, save as aforesaid, make such charges for the supply of energy as may be agreed upon, not exceeding the limits imposed by his license.

Charges for energy to be made without undue preference.

(2) No consumer shall, except with the consent in writing of the licensee, use energy supplied to him under one method of charging in a manner for which a higher method of charging is in force.

"(3) In the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer—

(*a*) by the actual amount of energy so supplied, or

(*b*) by the electrical quantity contained in the supply, or

(*c*) by such other method as may be approved by the Local Government.

(4) Any charges made by a licensee under clause (*c*) of sub-section (3) may be based upon, and vary in accordance with, any one or more of the following considerations, namely :—

(*a*) the consumer's load factor, or

(*b*) the power factor of his load, or

(*c*) his total consumption of energy during any stated period, or

(*d*) the hours at which the supply of energy is required" *

Notes—Agreement to supply energy at certain rate with Municipality amounts to contract between consumer and company. 35 C. W. N 933=135 Ind. Cas. 721=58C. 1458=A. I. R. 1932 Cal. 14 Method approved by Government cannot be illegal and objected to *Ibid* This section has no application for *bona fide* use of lamps for test to discover defect in machinery. A. I R. 1934 All 320=35 Cr. L. J. 1274=1934 Cr. C. 415.

24. (1) Where any person neglects to pay any charge for energy or any "sum other than a charge for energy"* due from him to a licensee in respect of the *supply of energy to him*, the licensee *may, after giving not less than seven clear days' notice in* ... without prejudice to his right to ... the supply and for that purpose ... ther works, being the ... discon- ... expenses ... but no longer.

Discontinuance of supply to consumer neglecting to pay charge.

(2) Whe... nder this Act to an Electric ... by the licensee, the licensee ... section until the Inspector has given his decision :

*"Provided that the prohibition contained in this sub-section shall not apply in any case in which the *licensee has made a request in writing to* the *consumer* for a deposit with the Electric Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further

*The words within quotations have been substituted or added by Act I of 1922.

(2) A licensee or any person authorised as aforesaid may also, in pursuance of a special order in this behalf made by the District Magistrate or, in a Presidency-town or Rangoon, by the Commissioner of Police, and after giving not less than twenty-four hours' notice in writing to the occupier enter any premises to which energy is or has been supplied, or is to be supplied, by him for the purpose of examining and testing the electric-wires, fittings, works and apparatus

. . . ensee or any person authorised . . . f the provisions of sub-section (1) or sub section (2), or, when such licensee or person has so entered, refuses to allow him to perform any act which he is authorised by those sub-sections to perform, or fails to give reasonable facilities for such entry or performance, the licensee may, after the expiry of twenty-four hours from the service of a notice in writing on the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer."*

Restrictions on licensee's controlling or interfering with use of energy.

21. (1) A licensee shall not be entitled to prescribe any special form of appliance for utilizing energy supplied by him, or, save as provided by section 23, sub-section (2), or by section 26, sub-section (7), in any way to control or interfere with the use of such energy:

Provided that no person may adopt any form of appliance, or use the energy . . . y to interfere with the supply by the

. . . ection (1), a licensee may, with the previous sanction of the Local Government, given after consulting the local authority, where the licensee is not the local authority, make conditions not inconsistent with this Act or with his license or with any rules made under this Act, to regulate his relations with persons who are or intend to become consumers, and may with the like sanction given after the like consultation add to or alter or amend any such conditions; and any conditions made by a licensee without such sanction shall be null and void:

Provided that any such conditions made before the 23rd day of January 1922 shall, if sanctioned by the Local Government on application made by the licensee before such date as the Local Government may, by general or special order, fix in this behalf, be deemed to have been made in accordance with the provisions of this sub-section.

(3) The Local Government may, after the like consultation, cancel any condition or part of a condition previously sanctioned under sub-section (2) after giving to the licensee not less than one month's notice in writing of its intention so to do."*

(4) Where any difference or dispute arises as to whether a licensee has prescribed any appliance or controlled or interfered with the use of energy in contravention of sub section (1), the matter shall be either referred to an Electric Inspector, and decided by him or, if the licensee or consumer so desires, determined by arbitration.

Obligation on licensee to supply energy.

22. Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply:

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum

* The words within quotations have been added by Act I of 1922.

"annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined, in case of difference or dispute by arbitration.

Notes.—A suit lies against licensee for damages for failure to supply energy on proper requisition A. I. R. 1926 Lah. 349=97 Ind. Cas. 537. Before a consumer can be supplied electric power from a new connection in substitution of an old one he must put in a fresh requisition in writing. A. I. R. 1925 Bom. 120=49 B. 182=26 Bom. L. R. 1206=85 Ind. Cas. 186.

Charges for energy to be made without undue preference.

23. (1) A licensee shall not, in making any agreement for the supply of energy, show undue preference to any person, but may, save as aforesaid, make such charges for the supply of energy as may be agreed upon, not exceeding the limits imposed by his license

(2) No consumer shall, except with the consent in writing of the licensee, use energy supplied to him under one method of charging in a manner for which a higher method of charging is in force.

"(3) In the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer—

(*a*) by the actual amount of energy so supplied, or

(*b*) by the electrical quantity contained in the supply, or

(*c*) by such other method as may be approved by the Local Government.

(4) Any charges made by a licensee under clause (*c*) of sub-section (3) may be based upon, and vary in accordance with, any one or more of the following considerations, namely :—

(*a*) the consumer's load factor, or

(*b*) the power factor of his load, or

(*c*) his total consumption of energy during any stated period, or

(*d*) the hours at which the supply of energy is required".*

Notes—*Agreement to supply energy at certain rate with Municipality amounts* to contract between consumer and company 35 C. W. N 933=135 Ind. Cas. 721=58C. 1458=A I R 1932 Cal 14. Method approved by Government cannot be illegal and objected to *Ibid* This section has no application for *bona fide* use of lamps for test to discover defect in machinery. A. I R. 1934 All 320=35 Cr. L. J. 1274=1934 Cr. C. 415

Discontinuance of supply to consumer neglecting to pay charge.

24. (1) Where any person neglects to pay any charge for energy or any "sum other than a charge for energy"* due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer.

(2) Where any difference or dispute has been referred under this Act to an Electric Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision :

*"Provided that the prohibition contained in this sub section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electric Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further

*The words within quotations have been substituted or added by Act I of 1922.

charges for energy as they accrue, and the consumer has failed to comply with such request."*

Notes—Supply should be discontinued only as last resort after all formalities have been complied with. A. I. R. 1935 Cal. 298.

Exemption of electric supply-lines or other apparatus from attachment in certain cases.

25. Where any electric supply-lines, meters, fittings, works or apparatus belonging to a licensee are placed in or upon any premises, not being in the possession of the licensee, for the purpose of supplying energy, such electric supply-lines, meters, fitting, works and apparatus shall not be liable to be taken in execution under any process of any Civil Court or in any proceedings in insolvency against the person in whose possession the same may be.

Meters.

26. (1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless *the consumer elects to purchase a meter.*

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) [illegible]
correct, [illegible]
days' n[illegible]
the meter.

(4) The licensee or any person duly authorized by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to, and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in sub-section (1); and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an Electric Inspector, and the decision of such Inspector shall be final:

Provided [illegible] r remove any such meter if [illegible] b section (6) has arisen unti[illegible]

(5) A consumer shall not connect any meter referred to in sub section (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line, without giving to the licensee not less than forty-eight hours' notice in writing of his intention.

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electric Inspector, or by a competent person specially appointed by the Local Government in this behalf; and, where the meter has, in the opinion of such Inspector or person, ceased to be correct, such Inspector or person shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter shall not, in the opinion of such Inspector or person, have been correct; * and where the matter has been decided by any person other than the Electric Inspector, an appeal shall lie to the Inspector, whose decision shall in

* Certain words after this repealed by Act I of 1922 have been omitted.

every case be final : but, save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity :

' Provided that, before either a licensee or a consumer applies to the Electric Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do " *

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the

umber of hours during
which energy is supplied
with the supply :

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary, be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1) :

the supply of energy depend
of any such meter, indicator

...e absence of an agreement to the contrary, keep the meter, indicator or apparatus correct ; and the provisions of sub sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

Explanation.—A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply,

maximum demand indicator or
be deemed to be "correct" if it
ed in the case of any such indicator or other apparatus.

Supply
area of supply.

27. ... Government may, by
to such conditions
thinks fit to impose,
authorize any licensee to supply energy to any person outside the area of supply, and to lay down or place electric supply-lines for that purpose :

Provided, first, that no such authority shall be conferred on the licensee within the area of supply of another licensee without that licensee's consent, unless the Local Government considers that his consent has been unreasonably withheld :

Provided, secondly, that such authority shall not be conferred unless the person to whom the supply is to be given has entered into a specific agreement with the licensee for the taking of such supply :

Provided, thirdly, that a licensee on whom such authority has been conferred shall not be deemed to be empowered outside the area of supply to open or break up any street, or any sewer, drain or tunnel in or under any street, railway, or tramway, or to interfere with any telegraph-line, without the written consent of the local authority or person by whom such street, sewer, drain or

as the case may be, "unless
hinks fit, considers that such

Provided, fourthly, that, save as aforesaid, the provisions of this Act shall apply in the case of any supply authorized under this section as if the said supply were made within the area of supply.

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* The words within quotations have been added by Act I of 1922.

PART III.

SUPPLY, TRANSMISSION, AND USE OF ENERGY BY NON-LICENSEES.

Sanction required by non-licensees in certain cases.

28. (1) No person, other than a licensee, shall engage in the business of supplying energy except with the previous sanction of the Local Government and in accordance with such conditions as the Local Government may fix in this behalf, and any agreement to the contrary shall be void:

* * * * * *

Provided* that such sanction shall not be given within the area for which a local authority is constituted, without that local authority's consent, or within the area of supply of any licensee, without that licensee's consent, unless the Local Government considers that consent has been unreasonably withheld.

(2) Where any difference or dispute arises as to whether any person is or is not engaging, or about to engage, in the business of supplying energy within the meaning of sub section (1), the matter shall be referred to the Local Government, and the decision of the Local Government thereon shall be final

Power for non-licensees to break up streets.

29. (1) The Local authority may, by order in writing, confer and impose upon any person, who has obtained the sanction of the Local Government under section 28 to engage in the business of supplying energy, all or any of the powers and liabilities of a licensee under sections 12 to 19, both inclusive, and the provisions of the said sections shall thereupon apply as if such person were a licensee under Part II.

(2) A local authority, not being a licensee, shall, for the purpose of lighting any street, have the powers and be subject to the liabilities, respectively conferred and imposed by sections 12 to 19, both inclusive, so far as applicable, as if it were a licensee under Part II.

(3) In cases other than those for which provision is made by sub-section (1), the person responsible for the repair of any street may, by order in writing, confer and impose upon any person who proposes to transmit energy in such street all or any of the powers and liabilities of a licensee under sections 12 to 19 (both inclusive), in so far as the same relate to—

(*a*) opening or breaking-up of the soil or pavement of such street, or

(*b*) laying down or placing electric supply lines in, under, along, or across such street, or

(*c*) repairing, altering or removing such electric supply-lines,

and thereupon the provisions of the said sections shall, so far as aforesaid, apply to such person as if he were a licensee under Part II.

(4) If no order is made within fourteen days after the receipt of an application for the same under sub-section (1) or sub-section (3), the order so applied for shall be deemed to have been refused, and every order, and every refusal to make an order, under sub section (1) or sub-section (3), shall be subject to revision by the Local Government.

Application of section 18 to aerial lines maintained by railways.

29A.† The provisions of sub-sections (3) and (4) of section 18 and of the [illegible] *explanatio*[illegible] aerial line [illegible] as defined [illegible] 1890,‡ as i[illegible] references to the railway administration

* Certain words after this repealed by Act I of 1922 have been omitted,

† Section 29A has been inserted by Act 40 of 1923,

‡ Act IX of 1890.

Control of transmission and use of energy.

30. (1) No person, other than a licensee duly authorised under the terms of his license, shall transmit or use energy at a rate exceeding two-hundred and fifty watts,—

(a) in any street, or

(b) in any place,

(i) in which one hundred or more persons are likely ordinarily to be assembled, or

(ii) which is a factory within the meaning of the Indian Factories Act, "1911," * or

(iii) which is a mine within the meaning of the Indian Mines Act, 1901,† "or

(iv) to which the Local Government, by general or special order, declares the provisions of this sub section to apply."‡

without giving not less than seven clear days' notice in writing of his intention to the District Magistrate, or, in a Presidency-town or Rangoon, to the Commissioner of Police, and complying with such of the provisions of Part IV, and of the rules made thereunder, as m[illegible]

Provided that nothing in this section [illegible] carriage of passengers, animals or goo[illegible] of the rolling stock of, any railway or [illegible] Indian Railways Act, 1890 §:

Provided, also, that the Local Government may, by general or special order and subject to such conditions and restrictions as may be specified therein, exempt from the application of this section or of any such provision or rule as aforesaid any person or class, of persons using energy on premises upon or in connection with which it is generated, or using energy supplied under Part II in any place specified in clause (b)

(2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are likely ordinarily to be assembled, the matter shall be referred to the Local Government, and the decision of the Local Government thereon shall be final

(3) The provisions of this section shall be binding on the Crown.

PART IV

General.

Protective Clauses.

Protection of railways and canals, docks, wharves and piers.

31. No person shall, in the generation, transmission, supply or use of energy, in any way injure any railway, tramway, canal or waterway, or any dock, wharf or pier vested in or controlled by a local authority, or obstruct or interfere with the traffic on any railway, tramway, canal or waterway.

Protection [illegible] telephonic and electric-signalling lines.

32 (1) [illegible] or using energy [illegible] ferred to as the [illegible] nable precautions in constructing, laying down and placing his electric supply-lines and other works and in work[illegible] whether by induction or other[illegible] or the purpose of telegraphic, [illegible], or the currents in such wire or line.

[illegible] Act I of 1922.

[illegible] 922

§ Act IX of 1890.

(2) Where any difference or dispute arises between the operator and the
tor has constructed, laid down or
s, or worked his system, in contra-
he working of any wire, line or
current is or is not injuriously affected thereby, the matter shall be referred to the "Local Government"; * and the "Local Government"* unless "it"* is of opinion that the wire or line has been placed in unreasonable proximity to the electric supply-lines or works, of the operator after the construction of such lines or works, may direct the operator to make such alterations in, or additions to, his system as may be necessary in order to comply with the provisions of this section, and the operator shall make such alterations or additions accordingly:

Provided that nothing in this sub section shall apply to the repair, renewal or amendment of any electric supply-line so long as the course of the electric supply-line and the amount and nature of the energy transmitted thereby are not altered

(3) Where the operator makes default in complying with the requirements of this section, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Explanation —For the purposes of this section, a telegraph-line shall be deemed to be injuriously affected if telegraphic, telephonic or electric signalling communication by means of such line is, whether through induction or otherwise prejudicially interfered with by an electric supply-line or work or by any use made thereof.

Notice of accidents and inquiries.

33. (1) If any accident occurs in connection with the generation, transmission, supply or use of energy in, or in connection with, any part of the electric supply lines or other works of any person, and the accident results or is likely to have resulted in loss of life or personal injury, such person shall give notice of the occurrence, and of any loss of life or personal injury actually occasioned by the accident, in such form and within such time and to such authorities as the Local Government may, by general or special order, direct."†

(2) The Local Government may, if it thinks fit, require any Electric Inspector, or any other competent person appointed by it in this behalf, to inquire and report—

(*a*) as to the cause of any accident affecting the safety of the public, which may have been occasioned by, or in connection with, the generation, transmission, supply or use of energy, or

(*b*) as to the manner in, and extent to, which the provisions of this Act or of any license or rules thereunder, so far as those provisions affect the safety of any person, have been complied with.

Prohibition of connection with earth, and power for Government to interfere in certain cases of default.

34. (1) No person shall, in the generation, transmission, supply or use of energy, permit any part of his electric supply-lines to be connected with earth except so far as may be prescribed in this behalf or may be specially sanctioned by the "Local Government"*

(2) If at any time it is established to the satisfaction of the Local Government—

(*a*) that any part of an electric supply-line is connected with earth contrary to the provisions of sub section (1), or

* The words within quotations have been substituted by Act 38 of 1920.
† Sub-section (1) to section 33 has been substituted by Act 1 of 1922.

(*b*) that any electric supply lines or other works for the generation, transmission, supply or use of energy are attended with danger to the public safety or to humam life or injuriously affect any telegraph line, or

(*c*) that any electric supply lines or other works are defective so as not to be in accordance with the provisions of this Act or of any rule thereunder, the Local Government may, by order in writing, specify the matter complained of and require the owner or user of such electric supply-lines or other works to remedy it in such manner as shall be specified in the order, and may also in like manner forbid the use of any electric supply-line or works until the order is complied with or for such time as is specified in the order.

Administration and Rules.

Advisory Boards.

35 (1) The Governor General in Council may, for the whole or any part of British India, and each Local Government may, for the whole or any part of the province, by notification in the *Gazette of India* or the local official Gazette, as the case may be, constitute an Advisory Board.

(2) Every such Board shall consist of a chairman and not less than two other members.

(3) The Governor General in Council or the Local Government, as the case may be, may, by general and special order,—

"(*a*) determine the number of members of which any such Board shall be constituted and the manner in which such members shall be appointed,"*

(*b*) define the duties and regulate the procedure of any such Board,

(*c*) determine the tenure of office of the members of any such Board, and

(*d*) give directions as to the payment of fees to, and the travelling expenses incurred by, any member of any such Board in the performance of his duty.

Appointment of Electric Inspectors

36. (1) The Governor General in Council may, by notification in the *Gazette of India*, appoint duly qualified persons to be Electric Inspectors, and every Electric Inspector so appointed shall exercise the powers and perform the functions of an Electric Inspector under this Act within such areas and subject to such restrictions as the Governor General in Council may direct.

(2) The Local Government may, by notification in the local official Gazette, appoint duly qualified persons to be Electric Inspectors within such areas as may be assigned to them respectively; and every Inspector so appointed shall exercise the powers and perform the functions of an Electric Inspector under this Act subject to such restrictions as the Local Government may direct.

(3) In the absence of express provision to the contrary in this Act or any rule thereunder, an appeal shall lie from the decision of an Electric Inspector to the Governor General in Council or the Local Government, as the case may be, "or, if the Governor General in Council or the Local Government, as the case may be, by general or special order, so directs, to an Advisory Board "†

Power for Government to make rules.

37. (1) The Governor General in Council may make rules for the whole or any part of British India, to regulate the generation, transmission, supply and use of energy, and, generally, to carry out the purposes and objects of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe the form of applications for licenses and the payments to be made in respect thereof;

(*b*) regulate the publication of notices;

* Clause (a) has been added by Act I of 1922

† The words within quotations have been added by Act I of 1922

(*c*) prescribe the manner in which objections with reference to any application under Part II are to be made ;

(*d*) provide for the preparation and submission of accounts by licensees in a specified form ;

(*e*) provide for the securing of a regular, constant and sufficient supply of energy by licensees to consumers and for the testing at various parts of the system of the regularity and sufficiency of such supply and for the examination of the records of such tests by consumers ;

(*f*) provide for the protection of persons and property from injury by reason of contract with, or the proximity of, or by reason of the defective or dangerous condition of, any appliance or apparatus used in the generation, transmission, supply or use of energy ;

(*g*) for the purposes of electric traction regulate the employment of insulated returns, or of uninsulated metallic returns of low resistance, in order to prevent fusion or injurious electrolytic action of or on metallic pipes, structures or substances, and to minimise, as far as is reasonably practicable, injurious interference with the electric wires, supply-lines and apparatus of parties other than the owners of the electric traction system, or with the currents therein, whether the earth is used as a return or not :

(*h*) provide for preventing telegraph-lines and magnetic observatories or laboratories from being injuriously affected by the generation, transmission, supply or use of energy ;

(*i*) prescribe the qualifications to be required of Electric Inspectors ;

(*j*) authorize any Elecric Inspector or other officer of a specified rank and class to enter, inspect and examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation, transmission, supply or use of energy to be, and to carry out tests therein, and to prescribe the facilit es to be given to such Inspectors or officers for the purposes of such examinations and tests ;

(*k*) authorize and regulate the levy of fees for any such testing or inspection and, generally, for the services of Electric Inspectors under this Act ; and

(*l*) provide for any matter which is to be or may be prescribed.

"(3) Any rules made in pursuance of clause (*f*) or clause (*h*) of sub section (2) shall be binding on the Crown."*

(4) In making any rule under this Act, the Governor General in Council may direct that every breach thereof shall be punishable with fine which may extend to three hundred rupees, and, in the case of a continuing breach, with a further daily fine which may extend to fifty rupees.

Notes.—The power to make general rules for the whole of British India can not
... 1931 Mad. 152=130 Ind. Cas. 721.
... ls on the meter in his house and is liable
... A. I. R. 1929 Lah. 867=30 Cr. L. J.
... In a Court of law the validity of a rule
... uestioned. A. I R. 1934 Rang. 178=12 Rang. 515=151 Ind. Cas. 632 ; see also A. I. R. 1934 Nag. 245=17 N. L. J. 140=1934 Cr. C. 1118.

Further provisions respecting rules.

... rules being made after previous pub...

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897,† as that after which a draft of rules proposed to be made under section 37 will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

* The words within quotations have been added by Act I of 1922.

† Act X of 1897

(3) Any rule to be made under this Act shall, before it is published for criticism under sub-section (2), be referred to the Advisory Board (if any) constituted for the whole of British India, or, if no such Board has been constituted, then to such Board or Boards (if any) as the Governor General in Council [illegible] published until such Board or Boards [illegible] expediency of making the proposed rule [illegible]

(4) All rules made under section 37 shall be published in the *Gazette of India*, and, on such publication, shall have effect as if enacted in this Act.

Criminal Offences and Procedure.

Theft of energy.

39. Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code,* and the existence of artificial means for such abstraction shall be *prima facie* evidence of such dishonest abstraction.

Penalty for maliciously wasting energy or injuring works.

40. Whoever maliciously causes energy to be wasted or diverted, or, with intent to cut off the supply of energy, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Penalty for unauthorized supply of energy by non-licensees.

41. Whoever, in contravention of the provisions of section 28, engages in the business of supplying energy shall be punishable with fine which may extend to three thousand rupees, and, in the case of a continuing contravention, with a daily fine which may extend to three hundred rupees.

Penalty for illegal or defective supply or for non-compliance with order.

42. Whoever—

(*a*) being a licensee, save as permitted under section 27 or section 51 or by his license, supplies energy or lays down or places any electric supply-line or works outside the area of supply ; or

(*b*) being a licensee, in contravention of the provisions of this Act or of the rules thereunder or in breach of the conditions of his license and without reasonable excuse, the burden of proving which shall lie on him, discontinues the supply of energy or fails to supply energy , or

(*c*) makes default in complying with any order issued to him under section 34, sub section (2) ;

shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing offence or default, with a daily fine which may extend to one hundred rupees.

Penalty for illegal transmission or use of energy.

43. Whoever, in contravention of the provisions of section 30, transmits or uses energy without giving the notice required thereby, shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing offence, with a daily fine which may extend to fifty rupees.

Penalty for interference with meters or licensee's works and for improper use of energy.

44 Whoever—

(*a*) connects any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub-section (7), with any

* Act XLV of 1860.

(c) prescribe the manner in which objections with reference to any application under Part II are to be made ;

(d) provide for the preparation and submission of accounts by licensees in a specified form ;

(e) provide for the securing of a regular, constant and sufficient supply of energy by licensees to consumers and for the testing at various parts of the system of the regularity and sufficiency of such supply and for the examination of the records of such tests by consumers ;

(f) provide for the protection of persons and property from injury by reason of contract with, or the proximity of, or by reason of the defective or dangerous condition of, any appliance or apparatus used in the generation, transmission, supply or use of energy ;

(g) for the purposes of electric traction regulate the employment of insulated returns, or of uninsulated metallic returns of low resistance, in order to prevent fusion or injurious electrolytic action of or on metallic pipes, structures or substances, and to minimise, as far as is reasonably practicable, injurious interference with the electric wires, supply-lines and apparatus of parties other than the owners of the electric traction system, or with the currents therein, whether the earth is used as a return or not :

(h) provide for preventing telegraph-lines and magnetic observatories or laboratories from being injuriously affected by the generation, transmission, supply or use of energy ;

(i) prescribe the qualifications to be required of Electric Inspectors ;

(j) authorize any Elecric Inspector or other officer of a specified rank and class to enter, inspect and examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation, transmission, supply or use of energy to be, and to carry out tests therein, and to prescribe the facilities to be given to such Inspectors or officers for the purposes of such examinations and tests ;

(k) authorize and regulate the levy of fees for any such testing or inspection and, generally, for the services of Electric Inspectors under this Act ; and

(l) provide for any matter which is to be or may be prescribed.

"(3) Any rules made in pursuance of clause (f) or clause (h) of sub section (2) shall be binding on the Crown."*

(4) In making any rule under this Act, the Governor General in Council may direct that every breach thereof shall be punishable with fine which may extend to three hundred rupees, and, in the case of a continuing breach, with a further daily fine which may extend to fifty rupees.

Notes.—The power to make general rules for the whole of British India can not make local control unnecessary A. I. R. 1931 Mad. 152=130 Ind. Cas. 721. Consumer is responsible for removal of seals on the meter in his house and is liable for conviction under R. 106 and S. 37(4) A. I. R. 1929 Lah. 867=30 Cr. L. J 702=1929 Cr. C. 601=116 Ind. Cas 889 In a Court of law the validity of a rule framed by the Governor General can be questioned A. I. R. 1934 Rang. 178=12 Rang 515=151 Ind. Cas. 632 ; see also A. I. R. 1934 Nag. 245=17 N. L. J. 140=1934 Cr. C. 1118.

Further provisions respecting rules.

38. (1) The power to make rules under section 37 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897,† as that after which a draft of rules proposed to be made under section 37 will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

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* The words within quotations have been added by Act I of 1922.

† Act X of 1897

(3) Any rule to be made under this Act shall, before it is published for criticism under sub-section (2), be referred to the Advisory Board (if any) constituted for the whole of British India, or, if no such Board has been constituted, then to such Board or Boards (if any) as the Governor General in Council may direct; and the rule shall not be so published until such Board or Boards (if any) has or have reported as to the expediency of making the proposed rule and as to the suitability of its provisions.

(4) All rules made under section 37 shall be published in the *Gazette of India*, and, on such publication, shall have effect as if enacted in this Act.

Criminal Offences and Procedure.

Theft of energy.

39. Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code,* and the existence of artificial means for such abstraction shall be *prima facie* evidence of such dishonest abstraction.

Penalty for maliciously wasting energy or injuring works.

40. Whoever maliciously causes energy to be wasted or diverted, or, with intent to cut off the supply of energy, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Penalty for unauthorized supply of energy by non-licensees.

41. Whoever, in contravention of the provisions of section 28, engages in the business of supplying energy shall be punishable with fine which may extend to three thousand rupees, and, in the case of a continuing contravention, with a daily fine which may extend to three hundred rupees.

Penalty for illegal or defective supply or for non-compliance with order.

42. Whoever—

(*a*) being a licensee, save as permitted under section 27 or section 51 or by his license, supplies energy or lays down or places any electric supply-line or works outside the area of supply; or

(*b*) being a licensee, in contravention of the provisions of this Act or of the rules thereunder or in breach of the conditions of his license and without reasonable excuse, the burden of proving which shall lie on him, discontinues the supply of energy or fails to supply energy; or

(*c*) makes default in complying with any order issued to him under section 34, sub section (2);

shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing offence or default, with a daily fine which may extend to one hundred rupees.

Penalty for illegal transmission or use of energy.

43. Whoever, in contravention of the provisions of section 30, transmits or uses energy without giving the notice required thereby, shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing offence, with a daily fine which may extend to fifty rupees.

Penalty for interference with meters or licensee's works and for improper use of energy.

44 Whoever—

(*a*) connects any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub-section (7), with any

* Act XLV of 1860.

electric supply-line through which energy is supplied by a licensee, or disconnects the same from any such electric supply-line, without giving to the licensee forty-eight hours notice in writing of his intention; or

(b) lays, or causes to be laid, or connects up any works for the purpose of communi ating with any other works belonging to a licensee, without such licensee's consent ; or

(c) maliciously injures any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub section (7), or wilfully or fraudulently alters the index of any such meter, indicator or apparatus, or prevents any such meter, indicator or apparatus from duly registering ; or

(d) improperly uses the energy of a licensee ;

shall be punishable with fine which may extend to "five"* hundred rupees, and, in the case of a continuing offence, with a daily fine which may extend to "fifty"* rupees ; and "if it is proved that any artificial means exists"* for making such connection as is referred to in clause (a), or such communication as is refer.ed to in clause (b), or for causing such alteration or prevention as is referred to in clause (c), or for facilitating such improper use as is referred to in clause (d), "and that"* the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, "it shall be presumed, until the contrary is proved,"* that such connection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

Penalty for extinguishing public lamps.

45. Whoever maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to three hundred rupees, or with both.

Penalty for negligently wasting energy or injuring works.

46. Whoever negligently causes energy to be wasted or diverted, or negligently breaks, throws down or damages any electric supply-line, post, pole or lamp or other apparatus connected with the supply of energy, shall be punishable with fine which

Penalty for offences not otherwise provided for.

47. Whoever, in any case n· (both any order with any of the conditions of hi may extend to one hundred rupe· with a daily fine which may extend to twenty rupees :

Provided that, where a person has made default in complying with any of the provisions of sections 13, 14, 15, 17 and 32, as the case may be, he shall not be so punishable if the Court is of opinion that the case was one of emergency, and that the offender complied with the said provisions as far as was reasonable in the circumstances

Notes—*Vide* A. I R. 1933 Rang. 70.

Penalties not to affect other liabilities.

48. The penalties imposed by sections 39 to 47 (both inclusive) shall be in addition to, and not in derogation of, any liability in respect of the payment of compensation or, in the case of a licensee, the revocation of his license, which the offender may have incurred.

Penalties where works belong to Government.

49. The provisions of sectio are acts in th long.

* The words within quotations have been substituted by Act I of 1922.

50. No prosecution shall be instituted against any person for any offence against this Act or any rule, license or order thereunder, except at the instance of the Government or an Electric Inspector, or of a person aggrieved by the same.

Institution of prosecutions.

Notes.—A licensee company is a person aggrieved within the meaning of s. 50. A. I. R. 1929 Lah. 867 = 30 Cr. L. J. 702 = 116 Ind. Cas. 889. Prosecution for theft of electrical energy not instituted by Government Electric Inspector but by Executive Officer of Cantonment Board should be quashed. A. I. R. 1935 Lah. 191.

Supplementary.

51. Notwithstanding anything in sections 12 to 16 (both inclusive) and sections 18 and 19, "the *Local Government**" may, by order in writing, for the placing of appliances and apparatus for the transmission of energy, confer upon any *public* officer or licensee, subject to such conditions and restrictions (if *any*) as the "Local Government"* may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885,† any of the powers which the telegraph authority possesses under that Act, with respect to the placing of telegraph-lines and posts for the purposes of a telegraph established or maintained by the *Government* or to be so established or maintained.

Exercise in certain cases of powers of telegraph-authority.

52. Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the license of a licensee, be determined by such person or *persons* as the Local Government may nominate in that behalf on the application of either party; but in all other respects, the arbitration shall be subject to the provisions of the *Indian Arbitration Act, 1899.*‡

Arbitration.

53. (1) Every notice, order or document by or under this Act required or authorized to be addressed to any person may be served by post or left,—

Service of notices, orders or documents

(*a*) where the Government is the addressee, at the *office of "such officer* as the Governor General in Council or the Local Government, as the case may be, may designate in this behalf";*

(*b*) where a local authority is the addressee, at *the office of the local* authority;

(*c*) where a Company is the addressee, at the registered office of the Company or, in the event of the registered office of the Company not being in India, at the head office of the Company in India;

(*d*) where any other person is the addressee, at the usual or last known place of abode or business of the person.

(2) Every notice, order or document by or under this Act required or authorized to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises or, if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

54. Every sum declared to be recoverable by section 5, [illegible] section 6, sub-section (2), section 11 [illegible] (2), clause (*b*), section 16, [illegible] section 18, sub section (2) [illegible] or section 26, sub section (4), and every [illegible]

Recovery of sums recoverable under certain provisions of Act.

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* The words within quotations has been substituted by Act [illegible]

† Act XIII of 1885.

‡ Act IX of [illegible]

able under this Act, may be recovered, on application to a Magistrate having jurisdiction where the person liable to pay the same is for the time being resident, by the distress and sale of any movable property belonging to such person.

Delegation of certain functions of Local Government to Electric Inspectors.

55. (1) The Local Government may, by general or special order, authorize the discharge of any of its functions under section 13 or section 18 "or section 34, sub-section (2)"* or clause V, sub-clause (2) or clause XIII of the Schedule by an Electric Inspector.

Protection for acts done in good faith.

56. No suit, prosecution or other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act.

Amendment of the Land Acquisition Act, 1894.

57. (1) In section 40, sub-section (1), clause (*b*), and section 41, sub-section (5), of the Land Acquisition Act 1894,† the term "work" shall be deemed to include electrical energy supplied, or to be supplied, by means of the work to be constructed.

(2) The Local Government may, if it thinks fit, on the application of any person, not being a Company, desirous of obtaining any land for the purposes of his undertaking, direct that he may acquire such land under the provisions of the Land Acqusition Act, 1894,† in the same manner and on the same conditions as it might be acquired if the person were a Company.

Repeals and savings

58. (1) The Indian Electricity Act, 1903‡ is hereby repealed:

Provided that every application for a license made and every license granted under the said Act shall, be deemed to have been made and granted under this Act.

(2) Nothing in this Act shall be deemed to affect the terms of any license which was granted, or of any agreement which was made, by or with the sanction of the Government for the supply or use of electricity before the commencement of this Act.

THE SCHEDULE.

PROVISIONS TO BE DEEMED TO BE INCORPORATED WITH, AND TO FORM PART OF, EVERY LICENSE GRANTED UNDER PART II, SO FAR AS NOT ADDED TO, VARIED OR EXCEPTED BY THE LICENSE.

[*See section 3, sub-section (2), clause (f)*]

Security and Accounts.

Security for execution of works of licensee not being local authority.

I. Where the licensee is not a local authority, the following provisions as to giving security shall apply, namely:—

(*a*) The licensee shall, within the period fixed in that behalf by his license or any longer period which the Local Government may substitute therefor by order [illegible] § before [illegible] the execu- [illegible] a posi- [illegible] him by [illegible] license, or any longer period which the Local Government may substitute therefor by order

* The words with quotations has been inserted by Act I of 1922.
† Act I of 1894. ‡ Act III of 1903.
§ That is, this Act (IX of 1910), *supra*.

under section 4, sub section (3), clause (*b*), of the Indian Electricity Act, 1910,* and before exercising any of the powers conferred on him in relation to the execution of works, deposit or secure to the satisfaction of the Local Government such sum (if any) as may be fixed by the license, or, if not so fixed, by the Local Government.

(*c*) The said sum deposited or secured by the licensee, under the provisions of this clause, shall be repaid or released to him on the completion of the works or at such earlier date or dates and by such instalments, as may be approved by the Local Government.

Audit of accounts of licensee not being local authority.

II. Where the licensee is not a local authority, the following provisions as to the audit of accounts ...ly :—

...he undertaking shall, before being ...ricity Act, 1910,* be examined and

execution of his duties, to such an amount ... shall be paid by the licensee on demand.

(*b*) The licensee shall afford to the auditor, his clerks and assistants, access to all such books and documents relating to the undertaking as are necessary for the purposes of the audit, and shall, when required, furnish to him and them all vouchers

the licensee.

Separate accounts.

III. The licensee shall, unless the Local Government otherwise directs, at all times keep the accounts of the capital employed for the purposes of the undertaking distinct from the accounts kept by him of any other undertaking or business.

Compulsory Works and Supply.

Execution of work after commencement of license.

IV. The licensee shall, within a period of three years after the commencement of the license, execute to the satisfaction of the Local Government all such works as may be specified in the license in this behalf, or, if not so specified, as the Local Government may, by order in writing issued within six months of the date of the commencement of the license, direct.

Provisions as to laying down of further distributing mains.

V. (i) Where, after the expiration of two years and six months from the commencement of the license, a requisition is made by six or more owners or occupiers of premises in or upon any street or part of a street within the area of supply, or by the Local Government or a local authority charged with the public lighting thereof, requiring the licensee to provide distributing mains throughout such street or part thereof, the licensee shall comply within six months with the requisition, unless,—

...owners or ... them by ...tten con- ...or guaran- ... years to ..., charged

(*b*) where it is made by the Local Government or a local authority, as the case may be, does not, within the like period, tender a like contract binding itself to take a supply of energy for not less than seven years for the public lamps in such street or part thereof.

* That is, this Act (IX of 1910), *supra*.

(2) Where any difference or dispute arises between the licensee and such owners or occupiers as to the sufficiency of the security offered under this clause, or as to the amount of energy to be taken or guaranteed as aforesaid, the matter shall be referred to the Local Government, and either decided by it, or, if it so directs, determined by arbitration.

or makers

...escribed by rules under the Indian Electricity Act, 1910 ;* and copies of the form shall be kept at the office of the licensee, and supplied free of charge to any applicant.

VI. (1) Where "after distributing mains have been laid down under the provisions of clause iv or clause v and the supply of energy

Requisition for supply to

...nen- ...ccu- ...ply ...of ...v,"†

supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy in accordance with the requisition :

Provided, first that the licensee shall not be bound to comply with any such ... it—

...e on him by the licensee of a notice in ...a written contract, in a form approved ...vith sufficient security, binding him- ... two years to such amount as will ...ee, a reasonable return to the licensee, and

(b) if required by the licensee so to do, pays to the licensee the cost of so much of any service line as may be laid down or placed for the purposes of the supply upon ...ade, and of so much of any ser- ...to lay down or place beyond ...n, although not on that property :

Provided, secondly, that the licensee shall be entitled to discontinue such supply—

(a) if the owner or occupier of the property to which the supply is made has not already given security, or if any security given by him has become invalid or insufficient, and such owner and occupier fails to furnish security or to make up the

...or improperly to interfere with the ...licensee, or

...pparatus in such property are not ...consequently likely to affect injuriously the use of energy by the licensee, or by other persons, or

(d) if the owner or occupier makes any alterations of, or additions to any ...perty as aforesaid, and ...connected to the source ...: "but the licensee shall ...ion of the act or default ...e it."†

...at which the owner or ...hall not exceed what is ...premises, and, where the owner or ...ied maximum rate, he shall ...month's notice in writing to ...er or occupier any expenses ...the service-lines by which

* That is, this Act (IX) of 1910 *supra*.

† The words within quotations have been added by Act 1 of 1922.

energy is supplied to the property beyond one hundred feet from the licensee's distributing main, or in respect of any fittings or apparatus of the licensee upon that property: and

Provided, fourthly, that, "if any requisition is made for a supply of energy and*" the licensee can prove, to the satisfaction of an Electric Inspector,—

(a) that "the nearest distributing main"* is already loaded up to its full current-carrying capacity, or

(b) that, in case of a larger amount of current being transmitted by it, the loss of presure will seriously affect the efficiency of the supply to other consumers in the vicinity,

the licensee may refuse to accede to the requisition for such reasonable period not exceeding six months, as such Inspector may think sufficient for the purpose of amending the distributing main or laying down or placing a further distributing main.

(2) Any service-line laid for the purpose of supply in pursuance of a requisition under sub-clause (1) shall, notwithstanding that a portion of it may have been paid

taken

e suffi-

use of

, fittings, works or apparatus, or as to

the third proviso to sub-clause (1), the

r, and decided by him.

(4) Every requisition under this clause shall be signed by the maker or makers thereof, and shall be served on the licensee.

(5) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1910;† and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

"VII ‡ The licensee shall, before commencing to lay down or place a service line in any street in which a distributing main has not already been laid down or placed, serve upon the local authority (if any) and upon the owner or occupier of all premises abutting on so much of the street as lies between the points of origin and termination of the service line so to be laid down or placed twenty-one days' notice stating that the licensee intends to lay down or place a service line, and intimating that, if within the said period the local authority or any five or more of such owners or occupiers require, in accordance with the provisions of the license, that a supply shall be given for any public lamps or to their premises, as the case may be, the necessary distributing main will be laid down or placed by the licensee at the same time as the service-line."

Further provisions as to laying of service lines.

VIII (1) Where "after distributing mains have been laid down under the provisions of clause IV or clause V and the supply of energy through those mains or any of them has commenced"‡ a requisition is made by the Local Government or by a local authority requiring the licensee to supply, for a period of not less than seven years' energy for any public lamps within 'area of supply,"* the licensee shall supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control continue to supply, energy for such lamps in such quantities as the Local Government or the local authority, as the case may be, may require.

Supply for public lamps.

(2) The provisions of sub-clause (b) of the first proviso, of sub clauses (c) and (d) of the second proviso, and of the third and fourth provisos to sub-clause (1) and the provisions of sub-clauses (2) and (3), of clause VI shall, so far as may be, apply to every case in which a requisition for the supply of energy is made under this clause as if the Local Government or local authority were an owner or occupier within the meaning of those provisions

* The words within quotations have been substituted by Act 1 of 1922

† Act IX of 1910 (i e this Act), *supra*

‡ The words within quotations and article VII have been substituted by Act I of 1922

Supply by Bulk-licensees.

IX. (1) Where, and in so far as, the licensee (hereinafter in this clause referred

Special provisions applying to supply by Bulk-licensees.

may

and

... pply is required, and the date upon which the supply is to commence, such date being fixed after the date of receipt of the requistion so as to allow an interval that is reasonable with regard to the locality and to the length of the electric supply-line and the amount of the plant required ;

(b) such distributing licensee shall, if required by the bulk-licensee so to do, enter into a written agreement to receive and pay for a supply of energy for a period of not less than seven years of such an amount that the payment to be made for the same at the rate of charge for the time being charged for such supply shall not be less than such an amount as will produce a reasonable return to the bulk licensee on the outlay (excluding expenditure on generating plant then existing and any electric supply-line then laid down or placed) incurred by him in making provision for such supply ;

(c) the maximum rate per unit of time at which a distributing-licensee shall be entitled to be supplied with energy shall not exceed what is necessary for the purposes for which the supply is required by him, and need not increased except

egoing provisions ;

use, it shall be determined

rbitrator shall have regard

(i) the period for which the distributing licensee is prepared to bind himself to take energy ;

(ii) the amount of energy required and the hours during which the bulk-

incurred by the bulk-licensee in

d

(iv) the extent to which the capital expended or to be expended by the bulk-licensee in connection with such supply may become unproductive upon the discontinuance thereof.

(1), the bulk-licensee shall give a

n his area of supply applying there-

to be supplied with only a portion

energy supplied to a distributing

under sub-clause (2).

bulk licensee

and

mor

agreement with the bulk-licensee to receive and pay for a supply of energy for a certain period, such notice shall be given so as not to expire before the end of that period.

Charges.

X. (1) * Where the licensee charges by any method "approved by the Local Government in accordance with section 23, sub-section 3, clause (c), of the Indian Electricity Act, 1910"†‡ any consumer who objects to that method may, by not less

Methods of charging.

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* ... 922 have been omitted.

†

‡ ... by Act I of 1922.

than one month's notice in writing, require the licensee to charge him, at the licensee's option, either by the actual amount of energy supplied to him or by the electrical quantity contained in the supply, and thereafter the licensee shall not, except with the consent of the consumer, charge him by another method :

[illegible] rough any distributing main, the [illegible] the method by which he pro- [illegible] ere the licensee has given such [illegible] l of charging without giving not less than one month's notice in writing of such change to the Local Government, to the local authority (if any) concerned, and to every consumer of energy who is supplied by him from such distributing main ;

(3) † If the consumer is provided with a meter in pursuance of the provisions of section 26, sub-section (1), of the Indian Electricity Act, 1910,† and the licensee changes the method of charging for the energy supplied by him from the distributing main, the licensee shall bear the expense of providing a new meter, or such other apparatus as may be necessary by reason of the new method of charging

Maximum charges.

XI. Save as provided by clause IX, sub-clause (3), the prices charged by the licensee for energy supplied by him shall not exceed the maxima fixed by his license, or, in the case of a method of charge approved by the Local Government, such maxima as the Local Government shall fix on approving the method :

Provided that, if, at any time after the expiration of seven years from the commencement of the license, the Local Government considers* that the maxima so fixed or approved as aforesaid should be altered, "it shall refer the matter to an Advisory Board and, if the Board recommends any alteration, may make an order in accordance with such recommendation,"‡ which shall have effect *from such date* as may be mentioned therein :

Provided, also, that, where an order in pursuance of the foregoing proviso has been made, no further order altering the maxima fixed thereby shall be made until the expiration of another period of five years.

Minimum charges.

"XIA. A licensee may charge a consumer a minimum charge for energy of such amount and determined in such manner as may be specified by his license, and such minimum charge shall be payable notwithstanding that no energy has been used by the consumer during the period for which such minimum charge is made."‡

Charge for supply for public lamps.

XII. The price to be charged by the licensee and to be paid to him for energy supplied for the public lamps, and the mode in which those charges are to be ascertained, shall be settled by agreement between the licensee and the the Local Government or the local authority, as the case may be, and, where any difference or dispute arises, the matter shall be determined by arbitration.

Testing and Inspection

Licensee to establish testing stations and keep instruments for testing.

XIII. The licensee shall establish at his own cost and keep in proper condition such number of testing stations, situated at such places within reasonable distance from any distributing main, as the Local Government may direct for the purposes of testing the pressure or periodicity of the supply of energy in the distributing main, and shall supply and keep in proper condition thereat, and on all premises from which he supplies energy, such instruments for testing as an Electric Inspector may approve, and shall shall supply energy to each testing station for the purpose of testing.

Facilities for testing.

XIV. The licensee shall afford all facilities for inspection and testing of his works and for the reading, testing and inspection of his instruments, and may, on each occasion of the testing

* Certain words before the repealed by Act I of 1922 have been omitted.

† That is this Act (No. IX of 1910) *supra*.

‡ The words within quotations have been inserted by Act I of 1922.

CHAPTER IX.

OF WITNESSES.

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

CHAPTER XI.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

THE INDIAN EVIDENCE ACT, 1872.

ACT NO. 1 OF 1872.

Received the assent of the Governor-General on the 15th March 1872.

Preamble.

WHEREAS it is expedient to consolidate, define and amend the law of Evidence; It is hereby enacted as follows :—

Scope of the Act.—This Act does not contain the whole law of evidence governing this country Section 2 of the Act saves rules of evidence contained in any Statute, Act or Regulation in force. *In re Radolph Stallman*, 15 C. W. N. 1053=39 C. 164=14 C. L J 375

Lex Fori—"The law of evidence is the *lex fori* which governs the Courts. Whether a witness is competent or not · whether a certain matter requires to be proved by writing or not · whether certain evidence proves a certain fact or not : that is to be determined by the law of the country where the question arises, where the remedy is sought to be enforced, and where the Court sits to enforce it" *Per Lord Brougham* in *Bain* v. *Whitehaven and Furness Junction Railway Company*, 3 H. L. C. 1.

English decisions.—The English decisions relating to evidence can be relied upon in India. The rules of evidence are subject to the general principles of jurisprudence. *Annavi* v *Emperor*, 39. M. 449=28 M. L J 329 This Act has codified the English law of evidence, with few exceptions *Guju Lal* v. *Futeh Lal*, 6 C. 171=6 C. L.R. 439 ; see also 17 B 129 ; 4B. 576. But the Act is not a servile copy of the English Law 10 B 439

History of the Law of Evidence. "Reasoning, the rational method of set-
for certain formal and mechanical
centuries, and in the midst of which
settle which is the best man by a
prize fight we get an accurate notion of the old Germanic trial. Who it is that 'tries' is the question? The men themselves There are referees and rules of the game, but no determination of the dispute on grounds of reason—by the rational method. So it was with 'trial by battle' in our old law, the issue of right, in a writ of right, including all elements of law and fact was 'tried' by this physical struggle, and the Judges of the Common Pleas Act like the referee at a prize fight, simply to administer the procedure, the rules of the game So of the King's Bench in Criminal Appeals ; and so sat Richard II at the trial of the appeal of treason between Bolingbroke and Norfolk, as Shakespeare represents it in the play. So of the various ordeals ; the accused party 'tried' his own case by undergoing the given requirement as to hot iron, or water, or the crumb. So of the oath ; the questioning, both law and fact, was 'tried' merely by the oath, with or without fellow swearers The old 'trial by witness' was a testing of the question in like manner by their mere oath. So a record was said to 'try' itself And so when out of the midst of these methods first came the trial by jury, it was the jury's oath, or rather their verdict, that tried the case. How this method of trial came to swallow up the others, and then to lose its chief features and became shaped into an instrument of our modern purely rational procedure, is a long story, and is not for this place. But now, when we use the phrase 'trial' and 'trial by jury' we mean a rational ascertainment of facts, and
as formerly tried by the
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the period of develop-
to him the first period is
from the primitive time up to the 12th century, thence to the sixteenth, thence to the seventeenth, thence to 1790 A D, thence to 1830, and thence to the present time. As regards development during the first period no reliable data are available —though certain rules can be traced up to that earliest time The next three centuries marked the establishment of the trial by jury and the separation of t

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process of pleading and procedure from that of proof, Between 1500 A. D. and 1700 A. D., the foundation of the present system was laid. During that period we find the regulation of the competency of witnesses, the rules of privileges, and privileged communications, the rules for attorneys, the compulsory attendance of witnesses, the privilege against self-criminations, the parol evidence rule and the enactments of the Statute of Frauds. The fourth period of ninety years, saw the final establishment of cross-examination by counsel, the rule for the impeachment and corroboration of witness, the "best evidence" doctrine, and the publication of the first treatise on the law of evidence, by chief *Baron Gilbert*. The next forty
e of the rulings upon evidence, there
. The thirty years ending with 1860
iam, Brougham and Denham.—Burr Jones, 6. In 1872, the Indian Evidence Act was enacted which is based on English law.

Origin of the Law of Evidence—In the submission of the facts which constitute the evidence in a case, there have been embarrassments real and imaginary, which have resulted in the development of a set of rules. These rules relate to the use of such facts in Court as
embarrassments referred to abov

an arbiter of
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Judge, was full of embarrass
men ignorant of the law and

of playing
be deplored,

we find the
listen with
impunity were carefully kept, from the jury by excluding rules, established by the judges.

It must not be supposed that these excluding rules came into existence all at once. The development of the jury into its final shape was a gradual one; and the growth of rules governing the use of evidence before the jury was equally gradual. It is immaterial to enquire here as to the kind of evidence which was excluded; that is to be found in any English treatise on the Law of Evidence. It is sufficient to say
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With the expansion of the work of the Courts and the ever increasing volume of
arose for shortening of trials and the
y. This influence was a powerful one
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growth of an important class of excluding rules Such rules shut out from the consideration of the jury any facts bearing upon character or habit; and this, although in

many instances previous character would be logically a most important piece of evidence from which to infer the truth as to facts in issue.

have for centuries been at work judicial tribunals must be cast, ed, and wearing groves along which the wheels of judicial enquiry must run, *Mckelvey's Law of Evidence*, pp. 9, 10.

PART I

RELEVANCY OF FACTS

CHAPTER I.

PRELIMINARY.

Short title.

1. This act may be called the Indian Evidence Act, 1872.

Extent.

It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Court-martial, "other than Court martial convened under the Army Act" "the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline Act) Act, 1934* [or the Air Force Act] † but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator.

Commencement of Act

And it shall come into force on the first day of September, 1872.

Legislative Changes—The words within quotations have been added by Act 18 of 1919

Application—It extends to the whole of British India For definition of the term of British India *vide* Act X of 1907 s. 7. It has been declared in force in the Santhal P. n the Angul Dis . 1 of 1900, s 4 racts, as regards ls, by Reg. 5 o ition) by Act 1 2 of 1913, s 3.

Judicial proceedings.—"An enquiry is judicial if the object of it is to determine a jural relation between one person and another, or a group of persons, or between him and the community generally; but even a Judge acting without such an object in view is not acting judicially" 12 B. 36; see also 15 M 138.

Court—For definition of the term *vide* s 3

Affidavits.—A declaration in the shape of affidavits cannot be received as discretionary powers are be proved by affidavit; hearing or trial on such when the opposite party *bonafide* desires to cross-examine a witness, and the witness can be produced, such witness's evidence shall not be allowed to be given by affidavit." *Powell*, p. 695.

Courts Martial.—The rules of evidence as contained in this Act do not apply to Courts martial held either under 38 Vict c 7. or under 44 & 45 Vict. c. 58. Courts-Martial must adopt the same rules of evidence as those followed in the Courts of ordinary criminal jurisdiction in England *Powell*, p. 28.

Arbitrator—*Vide* 11 M 85; 1 W. R. 12, but see 4 C. 231.

Repeal of enactments.

2. On and from that day the following laws shall be repealed :—

(1) all rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India;

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* Added by Act XXXV of 1934 † Added by Act X of 1927.

(2) all such rules, laws and regulations as have acquired the force of law under the 25th section of the Indian Councils Act, 1861,* in so far as they relate to any matter herein provided for; and

(3) the enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

or I
7 I.
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See also 7 A 385 1 A. 53; 1 A. 297; 11 A. 433; 10 A. 289. Criminal Procedure Code does not override Evidence Act which is special law unless as provided. A. I. R. 1933 All 440=55 A. 463.

Interpretation clause.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

"Court"

"Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

"Fact"

"Fact" means and includes—

(1) any thing, state of things, or relation of things capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations.

(a) That there are certain objects arranged in a certain order in a certain place, is a fact

(b) That a man heard or saw something, is a fact.

(c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation, is a fact.

"Relevant".

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue."

The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, † any Court records an issue of fact the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations

A is accused of the murder of B.

At his trial the following facts may be in issue:—

that A caused B's death;
that A intended to cause B's death;
that A had received grave and sudden provocation from B;

* 24 and 25 Vict. c. 67.

† See now Act 5 of 1908.

that A, at the time of doing the act which caused B's death, was, by reason of uusoundness of mind incapable of knowing its nature.

"Document." "Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations

A writing is a document ·
Words printed, lithographed or photographed are documents :
A map or plan is a document :
An inscription on a metal plate or stone is a document
A caricature is a document :

"Evidence" "Evidence." means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry :
such statements are called oral evidence ;
(2) all documents produced for the inspection of the Court ;
such documents are called documentary evidence.

"Proved". A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved" A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved." A fact is said not to be proved when it is neither proved nor disproved.

Court.—The definition of "Court" is
itself, and should not be extended beyond
"Court" in the above section means and i
Jury. 4 C 483=3 C. L. R. 270 (F B.) A
Act. 13 B. L R. App. 10=22. W. R. C. R 10.

Fact—"Ordinarily, a fact is something done or which has come to pass ; an act or deed or event, an effect produced or a result achieved . anything regarded as strictly true or actually existent, whether material or mental ; reality ; actuality. In legal use it includes the fact that any mental condition, of which any person is conscious, exists. The legal meaning is not limited to what is tangible or visible or in any way the object of sense Things invisible, mere thoughts, intentions fancies of the mind, when conceived of as existing or being true, are conceived of as facts.
idea of what a legal fact is in its relation to
ratiocination must be the recognition that
is not self contained, and that it presents no
connection with the object to which it necessarily relates That object is fact or matter of fact".—*Burr Jones, Ev* 66.

Relevant—"The relevant facts are facts other than *facts in issue* which are in the eye of the law so connected with or related to the facts in issue that they render the latter probable or improbable, or roughly throw light upon them. Relevancy may indeed be considered as synonymous with "connection", a word which frequently appears in discussions on the subject. Of course both words must be taken in their legal meaning, which is generally restricted Common sense of logical relevancy is, as a rule, wider than legal relevancy A Judge might, in ordinary transaction take one fact as evidence of another, and act upon it himself, when, in Court, he would rule that it was legally irrelevant And he may exclude facts, although relevant if they appear to him too remote to be really material to the issue." *Cockle Cas.* 56. The first condition which a fact, proof of which as

evidentiary fact is offered, must fulfill, is that it must be evidential of the main fact. It must furnish a basis from which the main fact can be inferred. The first duty of the Court is to apply the underlying principle of the law of evidence, namely, logical relevancy for the purpose of determining whether or not the fact offered can be evidence. If the fact meet this test, it may or may not be admitted. For flanked round the general principle on the law of evidence that what is logically relevant is admissible, are numerous excluding rules which say that this or that fact, though logically relevant, is inadmissible. The jury, as a feature of the English judicial system, is responsible for the existence of many of these rules, though each has its own peculiar principle upon which it is founded. These rules and their application form a large portion of the bar of evidence—*Mckelvy's Law of Evidence, p.* 13. The word "relevant" in this Act means admissible. *Per Lord Hobhouse* in *Lala Laksmi* v. *Chand Haidar Shah*, 3 C. W. N. 268 (notes).

Facts in issue—Facts in issue are those which are alleged by one party and denied by the other on the pleading in a civil case; or alleged in the indictment and denied by the plea of "not guilty," in a criminal cause, so far as they are in either case material. There is, therefore, little difficulty in ascertaining what are the facts in issue. *Cockle Cas* 56 Facts in issue are those facts which are necessary by law to establish the claim, liability, or defence, forming the subject-matter of the proceedings and which, either by the pleadings or by implication, are in dispute between the parties. Facts in issue are determinable primarily by the substantive law, and secondly by the pleadings. *Phip*, *Ev.* 53.

Documents—The term 'document' is one of difficult definition, many so-called documents being more properly classed under the head of real evidence. *Best* defines "document" as including "all material substance on which the thoughts of men are represented by writing or any other species of conventional mark or symbol" and expressly includes milkman's score, exchequer tallies and the like (*Best s 215*). *Wharton* defines "docun

letters, figures or marks,

s 614) *Stephen's* defini

having any matter expr

(*Dig Law Ev. art. 1*)

with words intelligible to himself

icatures, wooden tallies, and the like

definition; not apparently under the

others. *Best.* 213 The definition given in this Act is wider than the definition mentioned in Stephen's Digest. The definition seems to include all these things mentioned above. This definition applies to the word as used in s. 2 (b) of the Press (Emergency Powers) Act, 1931. A. I. R. 1934 All. 1031 = 1934 Cr. C. 1338.

Evidence—This definition is open to the criticism that it does not include those facts which in judicial proceedings may be addressed directly to the sense of the Court or jury. (*Burr Jones Ev. s 3*) Says *Professor Greenleaf* "Evidence in legal acceptation includes all the means by which alleged matter, of

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doubt more frequently applied to prove before a judicial tribunal, but it is not necessarily confined to this sense; it applies with equal correctness to information, intimation

matter

by reasoning or a reference to which is noticed without proof as the basis of inference in ascertaining some other matter of fact." (*3 Harv. Law Rev, 143*).

Proved.—A fact is said to be proved, when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that

a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. A muchs tricter degree of proof is requireds in criminal proceedings than in civil ones, and in criminal proceedings the persuasion of guilt must amount to such a moral certainty as convinces the mind of the tribunal as reasonable men, beyond all reasonable doubt. It is the business of the prosecution to bring guilt home to the accused, to the satisfaction of the minds of the *jury, but the doubt, to the benefit of which the accused is entitled, must* be such as a rational, thinking, sensible man may fairly and reasonably entertain, not the doubt, of a vacillating mind, that has not the moral courage to decide, "but shelters in a vain and idle scepticism" There must be doubts which a man may honestly and conscientiously entertain 3 L B. R. 216=4 Cr. L. J 382 "There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former a mere preponderance of probability, due regard being had to the burden of proof is a sufficient basis of decision: but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assu*rance is required. The serious consequence of an erroneous condemnation,* both to accused and society, the immeasurably greater evils which flow from it than from an erroneous acquittal have induced the laws of every wise and civilised nation to lay down the principle, though often lost sight of in practice, that the persuasion of guilt ought to amount to a moral certainty; or as an eminent judge expressed it, 'such a moral certainty, as convinces the minds of the tribunal, as reasonable men, beyond all reasonable doubt' The expression 'moral certainty' is here used in contra-distinction to physical certainty, or certainty properly so called; for the physical possibility of the innocence of any accused person can never be excluded. *Best* § *95*. See also 5 W R. Cr. 28; 21 W. R. Cr. 13; 4 W. R. Cr 19; 7 W R. Cr. 14; *11* W. R Cr. 20; 11 C. 642; 22 C 323; 8 C W. N. 818 Proof of guilt is not absolute certainty of guilt It is such proof of probability of guilt as practically amounts to certainty A. I. R. 1933 Oudh 340

Matters before it — [illegible] intentionally refrained from using the wor[illegible] l instead the words, "matters before it." For [illegible] Court The admission would not come within the definition of the word "evidence" as given in this Act but still it is a matter which the Court before whom the admission was made *would have to take into consideration in order to determine whether the particular* fact was proved or not" *Per Mitter J* in 9 C 363=12 C L R 490 Therefore in determining what is *evidence* other than "evidence" in the phraseology of the Act, [illegible] knowledge into a case. 3 I. A. 286; 11 M. I A 213; 22 W. R 9; 24 W. R. 81; 24 W. R. Cr 28

Distinction between proof and evidence —The word "evidence' in legal acceptation, includes all the means by which any alleged matter of fact the truth of which is submitted to investigation is established or disproved This term, and the word proof, are often used indifferently, as synonymous with each other; but the latter is applied by the most accurate logicians to the effect of evidence, and not to the medium by which truth is established None but mathematical truth is susceptible of that high degree of evidence, called demonstration which excludes all possibility of error, and which, therefore, may reasonably be required in support of every mathematical deduction Matters of fact are proved by moral evidence alone, by which is meant not only that kind of evidence which is employed on subject, connected with moral conduct, but all the evidence which is not obtained either from intention or from demonstration In the ordinary affairs of life, we do not require demonstrative evidence, because it is not inconsistent with the nature of the subject and to insist upon it would be unreasonable and absurd The most that can be affirmed of such things is, that there is no reasonable doubt concerning them The true question, therefore, in trials of facts is not whether it is possible that the testimony may be false but whether there is sufficient possibility of its truth; that is, whether the facts are shown by competent and satisfactory evidence. Things established by competent and satisfactory evidence are said to be proved—*Greenleaf on the Law of Evidence*, p 4

"May presume". **4.** Whenever it is provided by this Act that the Court may presume a fact, it may either

regard such fact as proved, unless and until it is disproved, or may call for proof of it :

"Shall presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved :

"Conclusive proof."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Presumption.—"A presumption is an inference as to a matter of fact which a Judge draws, or directs a jury to draw, as a matter of law."—*Powell*, 387. "Presumptions are aids to reasoning and argumentation, which assume the truth of certain matters of this purpose of some enquiry They may be grounded on general experience or probability of any kind ; or merely on policy and convenience. On

te in advance of argument or evidence or r granted : by assuming its existence : when ates a rule or a proposition which still leaves issumed. The exact scope and operation of

those *prima facie* assumptions are to the duty of going forward, in argu which they relate...Presumptions are although for the time being they ac

assumption, taking for granted, are simply so many names for an act or process which aids or shortens inquiry and argument." *Thayer Cas. 38*.

Division of presumption—English text writers divides presumptions into three classes .—(1) Presumption of fact (2) Rebuttable presumption of law and (3) Irrebuttable presumption of law. See also A. I. R. 1932 Mad. 343=62 M L. J. 511.

May presume.—The first class of presumption, mentioned by English text writers comes under this definition. It is nothing more than an argument more or less cogent ; it is an inference of one fact drawn from other facts. (*Vide Powell*, 386).

Shall presume—A presumption of law must be distinguished from *prima facie* evidence of fact. The latter no doubt seems to shift the burden of proof. A presumption of law can also be rebutted. But until it is rebutted, the presumption,

Statute or by judicial legislation. *Best*, 304.

Conclusive proof—On the other hand an irrebuttable presumption of law is no presumption at all ; it is simply an indisputable proposition of law. For example, the rule that a child under seven cannot commit a crime is a rigid rule of law—in fact, part of the definition of crime. (*Powell*, 386). Conclusive proof is restricted to matters so declared. A. I. R. 1932 All. 35=1931 P. L. J. 360.

mination of the facts in issue. It happens that in the almost innumerable cases that are tried, certain facts or groups of fact have been repeatedly presented to Courts as foundations for inferences ; and the inferences being reasonable ones, judged by experience of the Court and Jury, have been repeatedly drawn until a rule has crystalised. It is not difficult to see why these developed so early and were so readily adopted by the Courts. Judg Jurors and have seized every opportunity to to control their conclusions from the evidence was supposedly nothing if not logical, while

open to influences of prejudice, sympathy, and a thousand other things. Logical inference was therefore made a basis of a vast number of such rules which the Judges established and which they called "presumptions"—rules relating to the manner of proving cases and in this sense having to do with the law of evidence ; fixing, for example, when sufficient evidence was introduced, or when a party must introduce further evidence if he would win his case —*McKelvey's Laws of Evidence, p.* 80.

CHAPTER II.

OF THE RELEVANCY OF FACTS.

Evidence may be given of facts in issue and relevant facts.

5. Evidence may be given in any suit or proceeding of the existence or non existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation —This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations

...ng him with a club with the intention

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...ing ;

(*b*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

Scope of the Law of Evidence—"The question, therefore, of what propositions may evidence be offered is not answered by the law of evidence, except in a subordinate way. The answer to it is made in four parts. Evidence may be offered of such propositions of fact as (*a*) Are material by the substantive law to any right or duty, claim or defence ; (*b*) Are issuable in the case at bar by the terms of the pleadings under the rules of pleadings ; (*c*) Are effective to relieve a party from the establishment of one of the preceding propositions ; (*d*) Are admissible by the law of evidence as evidentiary facts and thus may become in turn propositions to be proved. The first and the second of these classes clearly do not involve the law of evidence. The third class is concerned with judicial admissions and their congeners ; such are really equivalent to a pleading, because they formally waive proof ; they are therefore no part of the law of evidence except for the necessity of distinguishing them from other things miscalled admissions The fourth class alone concerns intrinsically with the law of evidence." *Wigmore Cas.*, 3 Thus the law of evidence relates to the use of evidence before judicial tribunal, and in its proper significance, consists of (a) certain rules as to the exclusion of evidence, and (b) the rules which prescribe the manner of presenting evidence in the Courts.—*McKelvy's Law of Evidence*, p. 6.

What facts may be presented as evidence—Evidence can only be given of facts in issue or relevant facts. What are facts in issue are ascertained by the substantive law and the law of procedure What facts are relevant or admissible in evidence is answered by the law of evidence. This chapter contains the law of relevancy There is still a further restriction Evidence the production of which is barred by some provisions of Civil Procedure is not admitted in evidence even if they be relevant. This restriction is put by the explanation at the end of the section.

Legal relevancy.—The testimony offered must be logically probative of the matter to be proved, and if it is, it is legally relevant While this proposition, of course, includes direct evidence, it does not exclude, as irrelevant, evidence of facts not directly in issue but which create a presumption of the fact in issue. The qualification to the general rule is that it does not always follow merely because a fact is

logically relevant, that it is always relevant. Certain evidence though not logically Incompetent, may be excluded on the ground of its unimportance, when compared with an abundance of better evidence easily available; on the ground that it has so slight or remote a bearing on the case either in point of time or value, that it would be unjust and unreasonable to prolong and complicate a trial by its investigation; on the ground of public policy. (*Bur Jones* § 135) In this connection it must be borne in mind that the whole law of evidence has evolved from trial by jury system. "Legal relevancy, which is esential to admissible evidence, requires a higher standard of evidentiary force. It includes logical relevancy, and for reasons of practical convenience, demands a close connection between the facts to be proved and the fact offered to prove it. All evidence must be logically relevant; that is absolutely essential. The fact however, that it is logically relevant does not ensure admissibility. It must also be legally relevant. A fact which in connection with other facts, renders probable the existence of a fact in issue may still be rejected, if, in the opinion of the Judge and under the circumstances of the case it is considered essentially misleading or too remote."—*Best Evidence* (Camb. § 251.) Stephen defines the word 'relevant" as meaning "that any two facts to which it is applied are so related to each other, that according to the common course of events one either renders probable the past, present or future existence or non-existence of the other. *Stephen's Dig. Ev.* This is a definition of logical relevancy. Logical relevancy plays a certain important part in the law of evidence, in that no evidence is admissible unless it is relevant. It does not follow that all evidence which is logically relevant is admissible and in fact much that is logically relevant is excluded Certain rules are laid down, founded on various considerations, by which many matters which are logically relevant are declared inadmissible Legal relevancy is not different in its nature from logical relevancy. The only distinction is in its field of application. Legal relevancy is the attribute of all those logically relevant matters which are not declared inadmissible by one or more of the excluding rules. Stephen proceeds upon the theory that logical relevancy is the main condition of admissibility, and that all rules excluding evidence which is logically relevant are, therefore, exceptions to the ... st have distinguished between logical and ... ly to all those facts which are not excluded ... But if what is legally relevant can only ... od, it is of little use to retain the term. In general, it may be said, that what is logically relevant is admissible, unless it comes within the terms of one or more of the rules of exclusion. *McKelvy's Law of Evidence*, p. 166; see also 1914 M. W. N. 931.

Exclusion of evidence—Under the Evide ... and exclusion is the exception, and circumst... might operate to exclude are under the Act, to ... judging of the value to be allowed to evidence when admitted. 16 B. 661.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place or at different times and places.

Relevancy of facts forming part of same transaction

Illustrations.

(*a*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction is a relevant fact.

(*b*) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and goals are broken open. The occurrence of these facts is relevant, as forming part of the general ... them.

... part of a correspondence. ... which the libel arose, and ... are relevant facts, though they do not contain the libel itself.

(*d*) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Scope.—All facts which are parts of the same transaction are relevant to each other, so that when one of such facts is in issue, the others are admissible. Such facts which are thus parts of the transaction in issue, are generally known as "*res gestae*" (*R.* v. *Ellis*, 6 B E C. 145). This rule as to "*res gestae*" is one of the clearest illustrations that they are all parts of the san ll parts of the same transaction, . hat if any of them be in issue the others are admissible as relevant facts The real and very substantial difficulty is to determine the limits of the transaction, and what facts are really part of it (*Cockle Cas. 64*) Principles of the sections relating to relevancy of facts are mere rules of logic. (1914) M. W. N. 931.

e, every event which happens, is serve to make it stand out and appe consist of declarations, made at of the position, condition and its which serve to illustrate the r limitations such surrounding thing done (*res gestae*) So long as these circumstances do not consist of declarations and statements, they are introduced as a matter of course, proved by either side without question, unless, indeed, *they got too far away from the main fact, when, under rules having no relation to* the subject of hearsay, they are excluded. It is when they comprise statements, exclamations, answers to questions and other verbal utterances by the participants, in the act or event, that they occupy the attention of the Courts If it had been *possible to treat verbal utterances made under such conditions purely as acts*, and not in any sense as evidence of the things stated, the subject of *res gestae* would not have belonged under the head of exceptions to the hearsay The ground of reliability upon which such declarations are received is their spontaneity. They are the

pp 343-345.

Transaction—*A transaction is a group of facts connected together* as to be referred to by a single legal name, as a crime, contract, a wrong or any other subject of inquiry which may be in issue. Every fact which is part of the same transaction as the fact in issue is deemed to be relevant to the facts in issue, although *if it may not be actually in issue, and although if it were not part of the same transaction, it* might be excluded as heresay. Whether any particular fact is or not part of the same transaction as the facts in issue is a question of law upon which no principle has been stated by authority and on which single judges have given different decisions (*Stephen's Digest. art.* 3). See also 11 C W. N 266 Acts *are not parts* of the same transaction, unless they were done substantially at the same time, although they are action may be a 9 Moore, 217) Ac and explain, the fa as forming parts of *res gestae* (*Phip Ev.* 46) A "transaction" consists both of the physical acts and the words accompanying such physical acts, whether spoken by the person doing such acts, the person to whom they were done or any other persons present. Such words are admissible in evidence as part of the transaction (*Thompson* v. *Trevanion*. Skinner, 402 cited in Cockle Cas. 65). See also 34 P. R. 1914 Cr.=27 Ind. Cas. 664=16 Cr. L. J. 184

Verbal Act or Verbal parts of an Act—There are other declarations which are admitted as original evidence, being distinguished from heresay by their connection with the principal fact under investigation. The affairs of men consist of a complication of circumstances so intimately interwoven as to be hardly separable from each other Each owes its birth to some preceding circumstances so intimately interwoven as to be hardly separable from each other. Each owes its birth to some preceding circumstances, and, in its turn, become the prolific parents of others; and each during its existence has its inseparable attributes; and its kindred facts, materially affecting its character, and essential to be known in order to a right understanding of its nature. These surrounding circumstances, constituting parts of the *res gestae* may always be shown to the Court, along with the principal fact, and their admissibility is determined according to the degree of their relation to that fact, and in the exercise of the Court's sound discretion; it being extremely difficult, if not impossible, to bring this class of cases within the limits of a more particular description. The principal points for considerations are whether the circumstances and declarations offered in proof were contemporaneous with the main fact under consideration,
its character. *Greenleaf*;
"must have been made at
characterize and have l
facts they were intended to explain and so to harmonize with them as obviously to constitute one transaction." *Per Hossimer C J. Enos* v. *Tuttle*, 3 Conn 250

"Many acts are in themselves of an equivocal nature, and the effect of them depends upon the intention or disposition from which they proceed, which is in general best determined by the expressions
fore, the demeanour of person at a given
expressions, as constituting a part of that
intent and disposition, cannot properly be re
Notes to Potheir, II 242. "What a man says, when he does a thing, shows the nature of his act and is a part of the act; it determines its character and effect; tenancy is a continuance of acts in a certain relation to another and declarations during the tenancy by a man that he is a tenant and of a particular person may be put as a part of *res gestae*" *Rankin* v. *Trainbrook*, 6 Watts, 390.

Declarations.—A statement, in order to be admissible in evidence as part of the transaction or *res gestae*, must strictly accompany, or be made at the same time as the physical acts in question. *R.* v. *Bedingfield*. 14 Cox. C. C. 341. But in *R.* v. *Foster*, 6 C & P. 325, a statement, which followed the physical act, was admitted in evidence as a part of the transaction, although it was the last item of the transaction. A statement made by a third party may be relevant as part of the transaction, if he be actully present at the time. (*R.* v *Fowkes* Stephen 4). "There is a principle in the law of evidence which is known as *res gestae*; that is, the declarations of an individual made at the moment of a particular occurrence, when the circumstances are such that we may assume that his mind is controlled by the event, may be received in evidence because they are supposed to be expressions involuntarily forced out of him by the particular event, and thus have an element of truthfulness they might otherwise not have.........But you are not to give any more weight to a declaration thus made, or any weight at all unless you are satisfied that it was made at a time when it was forced out as the utterance of a truth, forced out against his will, or without his will, and at a period of time so closely connected with the transaction that there has been no opportunity for subsequent reflection or deter-
be wise for him to say." *Per Lacombe. J.*
ust be no fair opportunity for the will of
his will must have become and remained
oncocting matter for speech or selecting
words is concerned. Morever, his speech, besides being in the present time of the transaction, must be in the presence of it in respect to space. He must be on or near the scene of action or of some material part of the action. His declarations must be the utterance of human nature of the *genus homo* rather than of the indivi-
dual veracity. But sponteneous impulse
f man as such—man, distinguished from
al deliverance in each instance is that
his mind be such that his individuality
ed, so that he utters the voice of hu-
is regarded by the law as in some degree

trustworthy." *Per Bleckeley, C. J.* in *Traveller's Ind. Co.* v. *Sheppard*, 85 Ga. 751, 776. 'While it is said that the declaration must be contemporaneous with the main fact, no rule can be formulated by which to determine how near, in point of time, they must be. No two cases are exactly alike, and the determination of this question is separable from the circumstances of the case at bar. The transaction in question may be such that the *res gestae* would extend over a day, or a week or a month." Per *Shelby* in *Jack* v *Mutual R. P. Life Association*, 113 Fed, 49. See 10 C. 302; 11 C. W. N. 266; 9 B. H C. 358. As regards statement made to police, *vide* 50 Ind. Cas. 487; 20 Cr. L. J. 311 = 17 A. L. J. 760. In a case of rape, the statement of the woman is admissible if made just after the occurrence. 43 Ind. Cas. 443 = 19 Cr. L. J. 155; see also 4 Lah. L. J. 491; but see A. I. R. 1931 Mad. 233 = 32 Cr. L. J. 751.

Facts which are the occasion, cause or effect of facts in issue.

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a*) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(*b*) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Scope.—This section admits a very large class of connected facts in addition to those admitted by the last section. Here it should again be observed that the weight to be attached to such facts when admitted must, of necessity, vary. An effect may be conclusive proof of the primary act having been done, *e. g.* the birth of a child. On the other hand the existence of an opportunity may go but a very short way towards proving the committal of an act by a specified person since the same opportunity may have laid open to many others (*Field, Ev* 20). Every fact is connected with numberless other facts by ties more or less close. It may often be difficult for a judge to say whether a fact can or cannot be properly said to "form part of a transaction" within the meaning of section 6. This section meets this *difficulty by embracing a larger area of facts leaving the transaction itself, it provides* for the admission of several classes of facts, which though not, possibly, forming part of the transaction, are yet connected with it in particular modes, and so are relevant when the transaction itself is under enquiry. These modes of connection are (1) as being the occasion or cause of a fact; (2) as being its effect; (3), as giving opportunity for its occurrence; (4), as constituting the state of things under which it happened. They are in truth different aspects of causation (*Cun Ev* 91).

Principle.—"The competency of collateral fact to be used as the basis of legitimate argument is not to be determined by the conclusiveness of the inferences, it may afford in reference to the litigated fact. It is enough if these may tend, even in a slight degree to elucidate the enquiry or to assist, though remotely, to a determination probably founded on truth." *Holmes* v. *Goldsmith*, 147 U. S. 150, 164.

Occasion, Cause and Effect.—These are different aspects of causation. If they are parts of the same transaction, they are admissible under s. 6, and also

the parties with the jury and encourage attacks without notice. The maxim "*Res inter alios actae alteri nocere non debent*" is frequently supposed to express the principle of or similar transaction *inter partes* e principle of the maxim appears as examination of this chapter ared relevant are *res inter alios* arts. The maxim has its principal *Ev.* 125, 126). But where there is some logical connection between the fact offered as evidence and the issuable fact, or where proof of the former tends to make the latter more probable or improbable the testimony proposed is relevant, if not too remote (*Bur Jones, Ev.* s. 138.). So the admissibility of a similar fact as direct proof of the fact in issue depends, not on personal, but logical privity; and is mainly a question of degree, or of our knowledge and understanding of the causes of events, as to which in many cases, the progress of science may change the law. In proportion as the element of personality, the interjection of the free will of the human being diminishes, we become more certain of the effects of a causative force, and more ready to admit such evidence. (*Phip. Ev.* 126). On this principle this section lays down that those facts which are the occasion, cause and effect of relevant facts or facts in issue are admissible in evidence.

Opportunity.—Opportunity must always be relevant; for no circumstances can be more inforn committing the crin on *alibi*. But the a case cited by *Best* from *Starkie* in which a murdered her mistress. No persons were prisoner and the doors and windows were closed and secure as usual. The prisoner was condemned and executed chiefly on the presumption that no one else could have had access to the house; but it afterwards appeared by the confession of one of the real murderers, that they had gained admittance into the house, which was situated in a narrow street by means of board across the street from an upper window of an opposite house, to an lived, and that having committed no traces behind them. (*Norton*, sition of the parties whose conduct is in question are generally relevant to such conduct. So evidence of opportunity is relevant to the question whether a certain act was done. Circumstantial evidence is admissible not only in the absence of direct evidence, but also in aid of direct evidence. *Dowling* v *Dowling*, 10 Irish C. L. R. 236.

Illustrations.—Illustration (a) is an instance of facts relevant as giving occasion or opportunity; (b) of facts constituting an effect; (c) of facts constituting the state of things under which an alleged fact happened. (*Cunningham*, 91).

Motive, preparation and previous or subsequent conduct

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(*a*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b*) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c*) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d*) The question is whether a certain document is the Will of A.

The facts, that not long before the date of the alleged Will A made inquiry into matters to which the provisions of the alleged Will relate that he consulted vakils in reference to making the Will, and that he caused drafts of other Wills to be prepared of which he did not approve, are relevant

(*e*) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence, which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant

(*f*) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(*g*) The question is, whether A owes B rupees 10,000

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts

(*h*) The question is, whether A committed a crime

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i*) A is accused of a crime

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant

(*j*) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1) or as corroborative evidence under section 157.

(*k*) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as a corroborative evidence under section 157.

Scope —This section further illustrates the principle laid down in the preceding section. Under certain circumstances collateral facts are admissible when they fall within the definition of this section. The same principle underlies the admission of these facts. So familiar is the practice of proving, as parts of the claim of evidence the preparation, motive, desire or intention of the party to do the act in question. On the same principle it is relevant to prove misconduct of the party in respect to the *pending case, such as attempting to suppress or to fabricate testimony or* bribe witnesses or jurors ; and so it is relevant to prove the demeanour of a party accused

of a crime or tort, his flight or concealment and his falsehoods, his attempt to fasten the crime on others, his possession of property connecting him with the offence, or statements made in his presence likely to affect his conduct. So whenever any act may be proved, statements accompanying and explaining that act made by or to the person doing it may be proved if they are necessary to understand it. In criminal cases (of rape) the conduct of the person against whom the offence is said to have been committed, and in particular the fact that (she made a complaint soon after the offence to persons to whom she would naturally complain, are deemed to be relevant. But the terms of the complaint itself seem to be deemed to be irrelevant. When a person's conduct is in issue or is, or is deemed to be, relevant to the issue, statements made in his presence and hearing by which his conduct is likely to have [illegible]

[illegible] ted with the facts in issue are said to be "relevant facts," and they constitute what is known as "circumstantial evidence." Thus facts which supply a motive for an act, or constitute preparation for it, or conduct apparently Influenced by the act, are relevant to the question whether such an act was done by the person concerning whom such motive, preparation or conduct is proved (*R.* v. *Palmer*, *Cockle Cas 38*). *Lord Campbell* in that case observed : "With respect to the alleged motive, it is of great importance to see whether there was a motive for committing such a crime, or whether there was not, or whether there was an improbability of its having been committed so strong as not to be overpowered by positive evidence. But, gentlemen, if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know from experience of Criminal Courts that atrocious crimes of this sort have been committed from very slight motives ; not merely from malice or revenge, but to gain small pecuniary advantage, or to drive off for a time passing difficulties."

Case—The first information report against the accused is admissible under this section. 44 C. L. J. 253.

Motive—A motive is that which moves a man to do a particular act. It is that which is in his mind and which moves him to act and whether the belief which produces that state of mind is true or false the motive remains the same and the truth or falsity of the belief is not really in question. 62 Ind. Cas. 545. Intention must not be confounded with motive Intention shows the nature of the act which the man believes he is doing. Motive is the reason which induces him to do the act which he intends to do and does Motive is sometimes very important as evidencing a state of mind, which is a material element in the offence charged. (*Mayne's Cr. Law & 9 A*) See also 40 P. R. 1905 Cr.=148 P. L. R. 1905 ; 7 Ind. Cas. 38 ; 91 P. R. 1866 Cr. ; 7 W. R. 60 ; 15 W. R. 45 ; 5 W. R. 28 ; 1 W. R. 19. In the proof of certain crimes, where motive is an important element, evidence of motive will involve the placing before the jury of a plan or scheme carried out or attempted by the accused, which may include the commission of other crimes *Mckelvey's Evidence*, p. 190 In *Com.* v. *Robinson*, (1888) 146 Mass. 571=16 N. E. 452, X [illegible] of a scheme by X to kill Y, then [illegible] under which Y had been benefici[illegible] *Allen J.* observed : "In such cases there is a distinct and significant probative effect resulting from the continuance of the same plan or scheme, and from the doing of other acts in pursuance thereof It is somewhat of the nature of threats, or declarations of intention, but more specially of the preparations for the commission of the crime which is subject of the indictments." Motive for a crime, while it is always a satisfactory circumstance of corroboration when there is convincing evidence to prove the guilt of an accused person, can never supply the want of reliable evidence, direct or circumstantial of the commission of the crime with which he is charged. 94 Ind. Cas. 90= A. I. R 1926 Lah. 88 It is not competent to the prosecution to adduce evidence [illegible] guilty of criminal acts other than those [illegible] of leading to the conclusion that the [illegible] conduct or character to have committed [illegible] the other hand, the mere fact that the evidence adduced tends to show the comm[illegible] render it inadmissible if it be relevant to an issu[illegible] A. I. R. 1927 Sind 28 ; *Makin* v. *Attorney* [illegible]

dence is not admissible even to prove intention or motive. A. I. R. 1931 Mad. 689=54 M. 931; see also A. I. R. 1933 Oudh 265. Surrounding circumstances can be referred to judge mental state on previous occasion. A I. R. 1931 Pat 52=32 Cr. L. J. 478.

Preparation.—Previous attempts to commit an offence are closely allied to preparations for the commission of it, and only differs in being carried one step further and nearer to the criminal act of which however, like the former, they fall short (*Best's Evidence*, p. 404).

Conduct—*Vide* 17 Cr. L. J. 402; 22 C. 406; 24 W. R. 176; 7 A. 385; 82 Ind. Cas. 142; 52 Ind. Cas. 601=21 Bom L. R 724; 54 Ind. Cas 775; 35 P. L. R. 740; A. I. R 1932 Mad. 391 (F. B); A. I. R. 1932 Cal. 236=59 C. 40; 17 N L. J. 274.

Expl (2)—*Vide* 12 Ind. Cas. 87=12 Cr L. J. 479; 7 A. 385; *Reg.* v. *Mallony*, 15 Cox 456; 52 Ind. Cas. 601=20 Cr L. J. 681=21 Bom L R. 724; 1924 Nag. 22.

Facts necessary to explain or introduce relevant facts

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which established the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*) The question is, whether a given document is the Will of A.

The state of A's property and of his family at the date of the alleged Will may be relevant facts.

(*b*) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent

(*d*) A sues B for inducing C to break a contract of service made by him with A C, on leaving A's service says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e*) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f*) A is tried for a riot and is proved to have marched at the head of a mob The cries of the mob are relevant as explanatory of the nature of the transaction.

[illegible] duct of an action, to [illegible] for some introductory [illegible] ry desires to know the [illegible] Those circumstances [illegible] but in connection with the main issue to be put before the tribunal they are treated as the introduction to main matters or by way of inducement to it. They take the place of the preamble to a statute, which while it has no power in itself, combined with the enacting

clauses becomes the statute. The variety of these introductory or preliminary proofs as great in number as the variety of the causes of action, prevents any attempt at classification, but the rule as to their relevancy is abundantly established in view of these facts the preliminary questions leading to the introduction of relevant fact was held entirely proper. It follows that if introductory testimony, not inherently relevant, is admissible *a fortiori* that should be relevant, which will explain, illustrate and elucidate evidence already given. Indeed, it is now an every-day occurrence for such evidence to be received as relevant—evidence which, if considered abstractly
o nothing, but taken in connection
xplain and illustrate them, either by
or breaking the force of that given
by the other by showing its misapplication, exaggeration or other reason for depreciation of its force or value Thus an explanation of words used in a conversation, the demonstration of the use of a scientific instrument, testimony showing the conduct of a party bears a different construction from that he would have put upon it, a conversation which would otherwise be hearsay, are examples of the class of evidence referred to. *Burr Jones Ev.* § *137 (a) and* § 137 (*b*).

Explanation of facts.—If after the commission of a crime a person, whose name is mentioned as a participator in the crime, absconds, his conduct shows that he is indeed concerned in the crime. Therefore anything which tends to explain his conduct and furnishes a motive other than a guilty conscience is relevant under this section. *Gangaram* v *Imperator*, 62 Ind. Cas. 545=22 Bom. L. R. 1274. Oral evidence is admissible to prove that the recital of consideration in a document is innocent 4 Mys. L. J. 104 A recital in a sale deed between strangers to the suit comprising property not in suit, to the effect that it is bounded by the suit property belonging to one of the parties to the suit is not admissible in the suit. 3 C. W. N. 761=97 Ind Cas. 265=A. I. R 1926 Cal. 948.

, that some times evi-
either as serving to
ected with the commis-
has been admitted to
show that property, which had been taken out of the house at the time of the fire was afterwards discovered in the prisoner's possession. *R.* v. *Richman*, 2 East P. C. 1035, (*Norton, Ev.* 119); see also 18 A. 78; 1 C. W. N. 33; 9 C. W. N. 520.

Cases—Statement in
763=A. I. R 1932 Lah 50.
writing of sender, no presu
A. I. R 1933 Pat. 96=34 Cr. L. J. 421=13 P. L. T. 802.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Things said or done by conspirator in reference to common design.

Illustrations.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

Principle.—A rule is well established that, in cases where conspiracy is charged, the admission of one of the accused may become, by reason of the other proof in the case, admissible against the other. By themselves, and without other proof, they are not admissible ; but, if proof shows the existence of the conspiracy, statements as to details of the crime charged, made by one party, become admissible against the other. The effect of this rule may be illustrated by supposing that the fact of the

proof, but the fact of

proved. To procure a

. Suppose now, that the only proof of the former fact consisted of statements in respect to it made by one of the parties. It is clear that since both are shown to have been interested together, and to have set out to commit the act the statements made by one as to what was done should be received against the other. It must be borne in mind, however, that the fact of the conspiracy is to be proved by evidence entirely outside the admission. It is probable that, in all cases of conspiracy where admissions are received, their reception could be explained on the ground that they are a part of the *res gestae*.—*McKelvey's Law of Evidence*, p. 144. Section 10 is based on the principle of agency. A. I. R 1932 Bom. 56=33 Bom L. R. 1159

Scope.—The operation of this section is strictly conditional upon there being a

reference to the carrying out of the conspiracy. 38 C 169=15 C. W. N 25 ; 28 C. 797 A conspiracy within the terms of this section contemplates something more than the joint act of two or more persons to commit an offence. 4 C. W. N. 528. This section says that reasonable ground for belief in the existence of a conspiracy should be shown before evidence is given of the acts of persons, who but for such conspiracy,

ed under this section to make documents found in the possession of one of several persons accused of conspiracy admissible against other accused, is, that there is reasonable ground to believe in the existence of a conspiracy amongst such persons. It is not necessary for this purpose to establish by independent evidence that they were conspirators. 16 C. W. N. 1105 ; 30 C 983. See also 25 B. 230 ; 9 B. L. R. App 36 ; 7 B L. R 63 ; 46 C 700 ; 25 Bom. L. R. 248 ; 46 C. 215

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86. Confession

But the statement of an accused after arrest is not admissible under the section 46 C. 700. This section is wider than the English law on the subject which requires that acts and declarations of other conspirators must be in furtherance of the common purpose. Nor a conspirator who has severed his connection with the conspiracy is liable for the acts or declarations of the conspirators after such severance. (*Phipson*, 74).

Actionable wrong.—The acts and declarations of co-trespassers in civil actions and indeed of all persons combined for a common object whether civil or criminal are governed by the same rule The acts and declarations of joint tortfeasors are not however reciprocally admissible unless combinations for a common object be proved. (*Phipson*, 64) In civil actions the declarations of co-trespassers are subject to the same rule. If they are mere narratives, they are evidence only against the makers ; if they form part of the *res gestae* they are evidence against all. This section applies to an "actionable wrong" as well as a criminal offence. (*Norton*, 123).

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

see also A. I. R. 1934 Pat. 81=150 Ind. Cas. 884; A. I. R. 1933 Pat. 636=145 Ind. Cas. 944.

Custom.—"Custom" as used in the sense of a rule which in particular district, class or family has from long usage obtained the force of law must be (*a*) ancient (*b*) continued, unaltered, uninterrupted, uniform, constant; (*c*) peaceable and acquiesced in; (*d*) reasonable; (*e*) certain and definite; (*f*) compulsory and not optional to every person to follow or not. The acts required for the establishment of customary law must have been performed with the consciousness that they spring from a legal necessity and must not be immoral". (*Woodroffe, Ev.* 165).

Transaction.—Where a party sets up particular rights, judgments not *inter partes* in previous cases in which a similar right was asserted are admissible in evidence. 60 Ind. Cas 142; 59 Ind Cas. 734; 40 Ind. Cas. 838; 64 Ind. Cas. 465; 65 Ind. Cas 522; 65 Ind. [illegible]
398; 1 Pat. L. T. 221; 78 Ind Ca [illegible]
jugdgment not *inter partes* may be [illegible]
a fact in issue or a relevant fact, [illegible]
judgment cannot be used as evidenc [illegible]
643=23 C. L. J 583=35 Ind. Cas 298; 28 C. W N. 942; 82 Ind Cas. 99; 40 C. L J. 30=82 Ind. Cas 392; A I R. 1931 P. C 89=35 C. W. N. 521; 56 B. 324; 56 C. L. J. 369; 36 C W. N. 866; 59 C. L J 320=A. I R. 1934 Cal. 788; see also 15 M. 12; 22 I. A. 60; 24 I A. 101; 12 A 1; 12 C. W. N. 730; 22 C. 533; *contra* 6 C. 171 (F. B.); 13 C 352; 10 B. 439; 11 M. 116; 42 M. 9. In this connection *Ranade, J.* in *Lakshman* v. *Amrit*, 24 B. 598 observed: "It is not easy to reconcile this conflict of views in particular instances, but apparently the cases which decide that judgment not *inter partes*, are not admissible in evidence proceed chiefly on the ground that those judgments are sought to be used as having the effect, more or less of *res judicata*: For that purpose a judgment *inter partes* alone can be admitted in evidence, but for other purposes, where judgments are sought to be used to show the conduct of the parties or to show particular
[illegible] e by ancestors, or how the
[illegible] under secs. 11 and 13 as
[illegible]. The words of this section
[illegible] ires that the right asserted
[illegible] asserted, giving a wide interpretation to the section before assertion of the right is sufficient. 92 Ind. Cas. 104=A. I. R. 1926 Cal. 727. Documents not *inter partes* are admissible under this section. 30 C. W. N. 428=95 Ind. Cas 334=43 C. L. J. 327=A I R. 1926 Cal. 822; see also A. I. R. 1920 Nag 129; 22 N. L R. 49; A. I R 1926 Nag 109; 97 Ind. Cas. 853=A. I. R. 1926 Oudh 573; 92 Ind. Cas. 126. A *benami* transaction is fictitious transaction and is not admissible in evidence as a transaction under this section. 31 C. W. N. 32. Section 1 [illegible]
under investigation. 12 P L. [illegible]
by ss. 40 to 42 are not admissit [illegible]
(*a*) refers to admissibility of tra [illegible]
Cal. 398=54 C. L. J 353 Rec [illegible]
are not admissible against Zaminder. [illegible]
ments recognizing customs are admissib [illegible]
753; see also A. I. R. 1933 Oudh [illegible]
4934 Lah. 861=36 P. L. R. 256. [illegible]
and of two pedigrees found with it [illegible]
the two pedigrees found with the deci [illegible]
suit. Both pedigrees should have been [illegible]
parties to the suit and not as evidence of relationship under s. 32(5) The statemeants in the decree that the pedigrees were filed is evidence under s. 35, as an entry in a public record, or under s. 13 as evidence of the course of proceedings in a suit. A. I. R. 1934 P. C. 157=56 A. 468=36 C W. N. 1101=36 Bom. L. R. 867=1934 A. L J. 779 (P C.) Previous judicial decisions making mention of status of person claiming pre-emption are admissible in evidence under s. 13 as well as under s. 42. A. I. R. 1933 Lah. 57=33 P. L. R. 1054. Where the question is as to exclusive right in design of a label, judgments of cases where that right was disputed are relevant. A I. R. 1931 Oudh 277=8 O. W. N. 827. In a declaratory suit that plaintiff has rent-free title, *Kabola* which is his title deed is admissible. A. I. R. 1933 Pat. 685; see also A. I. R. 1933 Pat. 656.

Cases—33 Ind. Cas. 446 ; 36 Ind. Cas. 882 ; 33 Ind. Cas. 142 ; 19 C. W. N. 1038 ; 51 Ind. Cas. 866.

Map.—49 Ind Cas. 95 ; 5 C. 287.

Facts showing existence of state of mind, or of body or bodily feeling.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

**Explanation* 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

**Explanation* 2.—But where, upon the trial of a person accused of an offence the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.†

Illustrations.

(*a*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen

n a counterfeit

umber of other

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(*c*) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(*d*) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(*e*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publcations by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B

t C was solvent whereby

lvent, C was supposed to

n, is relevant, as showing

that A made the representation in good faith

ch A is

A did,

C was

* These *Explanations* were substituted for the original *Explanation* to s 14, by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891), s. 1 (*1*).

† *See* the Code of Criminal Procedure, 1898 (Act 5 of 1898) s. 311.

‡This *Illustration* was substituted for the original *Illustration* (*b*) to s. 14 b Act 3 of 1891, s. 1 (2)

(*h*) A is accused of the dishonest misappropriation of property, which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i*) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved.

(*j*) A is charged with sending threatening letters to B Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k*) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

... death was caused by poison.

... illness as to his symptoms are relevant facts.

... the state of A's health at the time an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

... providing him with a carriage for hire not reasonably ...red.

... drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p) A is tried for a crime.

The fact that he said some thing indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Principle —Where the que... or mental state, evidence of othe... intent, motive, or bodily or me... proof of other crimes. *Mckel*... 2 Crown Cas 128, upon the indi... by representing a ring to be a... guilty knowledge on X's part ... to other pawn-brokers The e... ment *Lord Coleridge* said : "It ... acts and thereby it raises a ... It is not conclusive for a man ma... many times the dupe of another ; but it is less likely he should be so oftener than once, and every circumsta... of these occasions, streng... this is amply borne out b... 197 *Barker J.* observed : ... guilty knowledge is a fact ... be shown by explicit ad... question of malice, evidence of other criminal acts leading up to one in question, which show the state of mind of the accused, is admissible There is a tendency not ... is very clear reason for ... intent or guilty know... ...d *Campbell, C. J.* said : ... principle generally to criminal cases." Where

however, the bodily or mental estate is not a material fact in issue, evidence as to such state is inadmissible. *McKelvey's Evidence*, p. 192

...idered by remarks upon the ... of the cases in which the ... mission of collateral circumstances, where it is necessary to show a particular state of mind Where a man is on his trial for a specific crime, such as uttering a forged note or coin, or receiving an article of stolen property, the issue is whether he is guilty of that specific act To admit therefore as evidence against him other instances of similar nature, clearly is to introduce collateral matter. This cannot be with the object of inducing the jury to infer, that because the accused has committed a crime of a similar description on other occasions, he is guilty on the present ; but to anticipate the defence that he acted innocently, and without any guilty knowledge, or that he had no intention or motive to commit the act. The first four illustrations (*a*), (*b*), (c), (*d*) are on the point of knowledge ; the fifth (*e*) as also (*i*) and (*j*), of intention ; the sixth ... , (*m*) of states of body , (*n*) ... illustrate the explanation. ... ed to have done, some act involving guilty knowledge or intention, or other state of mind, after proof of the physical act, evidence is admissible of his similar acts on other occasions, but only in order to show such guilty knowledge or intention or state of mind, (*R.* v. *Geering*, 18 L. M. J M C 215 = Cookle Cas. 99) See also *R* v. *Rhodes*, L. R. (1899) 1 Q. B. 77, where it was held that such evidence was admissible even when such acts were subsequent to the transaction in question if they show a connected, or entire scheme or system of operations. The matter may be roughly stated thus unconnected conduct on other occasions is never admissible to prove the *actus reas*, but is admissible to prove the *mens rea* or other state of mind The rule applies to both civil and criminal cases. With regard to criminal charges, in the case of *R.* v. *Bond*, (1906) 2 K. B 389, *Bray J.* summarised the law as follows :—"(1) Where the prosecution seeks to prove a system or course of conduct ; (2) where the prosecution seeks to rebut a suggestion on the part of the prisoner of accident or mistake , (3) where the prosecution seeks to prove knowledge by the prisoner of some fact." *Cockle, Ev.* 100.

... titutes often the burden of the inquiry, and to prove the intent it becomes necessary, in many instances, to extend the examination beyond the particular transaction concerning which the accused is upon his trial. For the purpose, therefore, of proving the intent, not of proving the act itself, it is often permissible to show other criminal transactions of the same sort springing from the like mental condition (*Burr Jones* s. 143). "It is, that though the prisoner is not to be prejudiced in the eyes of the jury by the needless admission of testimony tending to prove another crime, yet whenever the evidence which tends to prove the other crime tends also to prove this one, not merely showing the prisoner to be a bad man, but by showing the ... when he did the act ... it really tends to this, ... (1 *Bish Cr. Pro. S.* 1067). See also 16 B 414 ; 11 B H C 90 , 8 B. 223 ; 6 C 655 ; U. B R. (1907-1909) Evi 1 ; 22 Ind Cas 187 ; 22 C. W. N 404 ; 40 C 713 = 20 C W. N. 262 ; 46 B 958. See also 34 A 93 = 12 Ind. Cas. 987 ; 91 Ind. Cas. 647 = 22 Cr. L. J. 407 ; 38 Ind Cas. 971 In a charge of cheating under s 415, from the mere fact that the accused was ... Court cannot infer ... Cr L J. 401 = 56 B. 204 ... intention. A. I. R. 19... as evidence of charac... 10 O.W.N. 688.

Explanation I—Evidence as to general dishonesty of character is not admissable for the purpose of raising a presumption of dishonesty in the particular case under trial. 8 Cr. L J. 411 ; see also 13 Ind. Cas 781.

Explanation II.—As regards an offence under s 400 I. P C. previous commission of decoity by the same accused is relevant under s 14 of the Evidence Act.

Convictions previous to the time specified in the charge, or previous to the framing of the charge are relevant under this explanation. But subsequent convictions are not admissible. 1 C. W. N. 146.

15. When there is a question whether an act was accidental or intentional, [or done with a particular knowledge or intention],* the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional.

Illustrations.

(*a*) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

e, and that the

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

Legislative changes.—The words in the brackets have been inserted by Act 3 of 1891.

Scope—This section is an application of the general rule laid down in s. 14, and it is not necessary under the section that all the acts should form part of a series of similar occurrences; such acts may be proved. Where the particular transaction is one of a series of similar frauds, evidence of the intention of the accused in the particular C. L. J. 610; see also A. I. R. 1933 Cal. 1 for theft it cannot be assumed, as a matter for the same offence is relevant in establishi that it may be relevant under this section it m applies. U. B R. (1897-1901) vol. 1, 144. See also 13 Cr. L. J. 125; 12 Cr. L. J. 611; 269 P. L. R. 1914; 25 P. W. R. 1910 Cr.; 47 C. 671; 60 Ind. Cas. 331.

Principle.—"In criminal cases the leading principle is that evidence of all matters which are irrelevant to the issue w exception that evidence will be admitted of throw light on the transaction in issue, as course of conduct, or to show criminal intention or guilty knowledge in the mind of the accused or to rebut the defence that the undesignedly"—*Powell*, p. 128. This section is whether an untruthful statement is accidental ledge or intention. 15 A. L. J 241.

Passing bad coins—In cases of passing bad coins previous offence is relevant. *R.* v. *Jarves*, 7 Cox. 53.

Arson.—In cases of arson, evidence may be given of previous fires that the prisoner had experienced in his premises. *R.* v. *Gray*, 4 F. & F. 1102.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Existence of course of business when relevant

* There words within questions were inserted by the Indian Evidence Act (1872) Amendment Act 3 of 1891.

Illustrations.

(*a*) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that pace are relevant.

(*b*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Scope.—There is no presumption that the course of business in a private office has the regularity of that in a public department. But the existence of any course of business, according to which an act in question would have been done, is relevant to the question whether such act was in fact done. *Hetherington* v *Kemp*, 16 R. R. 773. Illustration (*a*) is based on this case. The question in that case was as regards the posting of a particular letter. In this [illegible] *Ellenborough C. J.* [illegible]
given that the lette[illegible]
the post office. Ha[illegible]
no recollection of t[illegible]
the letters found upon th[illegible]
evidence of the course o[illegible]
In a private office the [illegible]
the Court will presume [illegible]
addressed to A, [illegible]
Office the Court [illegible]
and R 250; *Jon*[illegible]
that A had receive[illegible] *[illegible]* v. *Collin*, 7 M. and W. 515; *Ward* v. *Lord Ellenborough*, 12 C B 252 There is a presumption that public and official acts and duties have been regularly and properly performed. *Berryman* v. *Wise*, 4 T R. 366

Course of Business—It means the ordinary course of a professional avocation or mercantile transaction or trade or business. 23 B 63

Registered letter.—Where a registered letter is posted to a firm's correct address but is returned with the word 'refused' endorsed upon it, the presumption under this section in favour of the existence of common course of business is that the letter reached the place of firm's business and it may also be presumed that it was refused by an agent or partner of the firm. 50 Ind. Cas. 149; see also 15 C. 681; 9 A. 366; A. I. R. 1933 Rang 76

ADMISSIONS.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission defined.

Admission.—An admission is "a statement oral or written, suggesting any inference as to any fact in issue or relevant or deemed to be relevant to any such fact, made by or on behalf of any party to any proceedings" (Reynold's Step. Ev. art. 15) Admissions have been sub-divided into direct and indirect, express, implied, incidental, judicial and extra-judicial, and the names of some of them sufficiently indicate the description of any particular admission to obviate special definition. Direct and express admissions are practically the same Implied admissions are made by having done or omitted to do some act. The term "incidental" carries with it that the admissions were not made in connection with the matter under judicial inquiry. So judicial admissions are such as may be made in pleadings or in the progress of a trial or generally in the course of judicial proceeding, and all admissions not so made may be grouped as extra-judicial admissions. *Burr Jones* s 235. Silence or conduct may amount to an admission, when it is natural to expect a reply or statement. (*Bessela* v *Stern*, L R 2 P. D. 265). A vague admission is no admission. 21 A. L. J 869. Entire statement in admission must be considered together. Particular statement cannot be selected. 141 Ind. Cas 264=34 P L. R. 149=14 Lah 218=A. I. R. 1933 Lah. 179. Erroneous admission may be withdrawn. A. I. R. 1931 Lah. 6=32 P. L. R. 413. An admission is presumed to be true. 38 C. W. N. 861.

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Office the Court will presume [illegible]
and R. 250; *Jones* v. *Great* [illegible]
that A had received it in the or[illegible]
M. and W. 515; *Ward* v. *Lord* [illegible]
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Admission and confession.—In English law admission is confined in civil cases and confessions in criminal cases. But in the Evidence Act such distinction has not been observed. Sections 17-22 are applicable both to civil and criminal cases. But confession is used only in relation to criminal cases and herein the Act followed the English law.

Cases.—106 P. R. 1915; 28 M. L. J. 92; 36 C. L. J. 186; 65 Ind. Cas. 345; 65 Ind. Cas 398; 65 Ind. Cas. 368; 26 C. W. N. 273; 22 C. W. N. 530; 1924 Nag. 387.

Admission by party to proceeding or his agent;

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

by suitor in representative character;

Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

by party interested in subject-matter.

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by persons from whom interest derived.

(2) persons from whom the parties to the suit have derived their interest in the subject matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

Scope—Let us confine ourselves to civil admission for the present. The persons by whom admission may be made are the parties to the suit or their agents, or those identified in interest with them; or the persons *sub modo* in (1) and (2). If they proceed from a stranger they are generally inadmissible; unless he be dead, as to which see section 32 *post*. An admission made by an infant after he arrives at age will bind him. No distinction should be drawn between the *nominal* and *real* parties to a suit. The Courts of India being Courts of Equity should deal directly with admissions made by nominal parties, as, for instance, consignees suing in the name of consignors. When the Court considers the admission of such a party fraudulent it should be at once rejected (*Norton, Ev.* 143).

Cases—A statement made by defendant in another suit may be used as an admission within the meaning of this section. 22 W. R. 203. An admission against her own interest by the predecessor-in-title of the defendant is relevant under ss. 18 and 21, though not conclusive, and is sufficient by itself to shift the burden of proof. 7 N. L. R 23 See also 69 Ind. Cas 35; 9 O. L. J. 262; 46 Ind. Cas. 709. "Proceeding" refers to proceeding in which matter stated by party is at issue or is relevant. 1933 Cr. C. 1123 = A. I. R. 1933 Rang. 292. Statement by previous *mohant* is not binding on present incumbent or worshippers. A. I. R. 1931 Lah. 161 = 32 P. L. R 910 = 12 Lah. 497.

Parties.—An admission once made is binding against the party making it for all the purposes of the suit, unless it be shown that such admission was recorded erroneously 2 W. R. Act. X R. 1. An admission made by parties to a previous suit or an arbitration proceedings may be used as evidence against them in subsequent suit. 7. W. R. 249; 9 W. R. 162; 5 B. L. R. 529; 14 W. R. 28; 13 M. I A. 438; 17 W. R. 372; 23 W. R 27; 15 W. R. 437; 27 W. R. 303. Where a person uses the admission of another as evidence, the whole admission must be put in. 7 W. R 29. The [illegible] rect was held to be legal, [illegible] suit. 8 W. R. 291. Party's [illegible] A. I. R. 1932 All. 199 = 1932 [illegible] Party making admission must prove that it was made under circumstances not binding. 138 Ind. Cas. 761 = 59 C. 541 = A. I. R. 1932 Cal. 538; see also A. I. R. 1933 Lah. 725 = 34 P. L. R. 182; A. I. R. 1933 Lah. 347; A. I. R. 1932

Lah. 651=33 A. L. R. 819. Gratuitous admission can always be withdrawn. A. I. R. 1933. Oudh 28=9 O. W. N. 923.

29 L J. Ex. 382). Opinion of Counsel is not binding. A. I. R. 1934 All 531

Agents.—Admissions may be made by agents *Williams* v. *Inns*, 10 R. R. 702. Whatever an agent or servant does or says, within the scope of his authority, express or implied, in carrying out the business in which he is employed binds his principal. An agent or servant may therefore bind his principal by admissions made within the scope of his authority or duty. *Kirkstall Brewery Co. v. Furness Ry. Co* L. R 9 O. B 468 ; *G W Ry Co.* v *Willis*, 34 L J. C. P 195 ; *Govindji* v. *Chota Lal*, 2 Bom. L. R 651 Statements made by an agent about past transactions will not bind the principal as admissions when the agent's authority to act in the particular matter has ceased the principal cannot be affected by his subsequent statements. *Peto* v *Hague*, 5 Esp 134 See also 3 B. L. R. 273 ; 46 Ind Cas 709 Witness is not agent of party calling him. 34 Bom. L. R. 35=A. I R. 1932 Bom. 117.

Admission by one of several persons.—Where several persons are interested in the subject-ma
one of those persons are
all jointly suing or sued
pute and were made by
with the party against whom the evidence is tendered 48 Ind. Cas. 193 ; A. I. R 1934 Lah 625 The mere fact that two persons are in collusion, does not make admission by one admissible against another. A. I. R. 1934 All. 684.

Cases—69 Ind Cas. 35 ; 66 Ind. Cas 15

Admissions by persons whose position must be proved as against party to suit.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustrations.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B

A denies that rent was due from C to B

A statement by C that he owed B rent is an admission and is a relevant fact as against A, if A denies that C did owe rent to B

Cases.—The question at issue was whether a party was the legitimate issue of

Case—64 Ind Cas. 334.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is whether a horse sold by A to B is sound.

A says to B—"Go and ask C ; C knows all about it." C's statement is an admission

Scope.—An admission may be made by agents. If one party directs or requests another party to apply to any other persons for information on a certain matter, such reference may constitute such other person as agent in such matters for such purpose *Williams* v *Innes*, 10 R R (702). Whenever a party refers to the evidence of another, he is bound by it—and this is constantly good evidence. *Daniel* v. *Pitt*. 1 Camp. 366. It matters not
Price v. *Holis*, 1 M. and S. 105
need not be by express words.
refer to another, it will suffice.
by the statements of the Muktear
the parties. 4 U. P. L. R. 9 (Rev). See also 80 Ind. Cas. 16=46 A. 710. But there must be an express reference L. R. 2 All. 204. Reference need not be on questions of fact within knowledge of referee. 146 Ind. Cas. 84=1933 A. L. J. 1127= A I. R 1933 All. 861 Statement of referee is admission of both parties and is conclusive against both and can operate as estoppel. *Ibid.*

Proof of admissions against persons making them, and by or on their behalf.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest ; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases :—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(*a*) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged ; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

ier proper course.
of his business showing observations alleged to have been taken by him from day to day and indicating that the ship was not taken out of her proper cause. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(*c*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and

vere dead, it

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding *illustration.*

Why admissions competent.—"Whatever a party voluntarily admits to be true, though the admission be contrary to his interest may reasonably be taken for

truth are properly dispensed with, they are inapplicable An oath is administered to a witness in order to impose an additional obligation o i his conscience and so to add weight to his testimony, and he is cross-examined to ascertain his means of knowledge, as well as his intention to speak the truth But where a man voluntarily admits a debt or confesses a crime, there is little occasion for confirmation ; the ordinary motives of human conduct are sufficien warrants for belief" *Southern Ins. Do* v. *White*, 58 Ark 277. In English law such admissions are admissible as one of the exceptio is to the hearsay evidence Strictly speaking they are open to but few of the objections which may be urged against hearsay testimony. Admission made by a party is of considerable weight as evidence against him, and may, if unexplained, be even decisive. 51 Ind. Cas 876 ; 13 C. W. N. 409 ; 7 Ind. Cas 505. Evidence of person not party to suit is admissible against such person for subsequent suit in which he is party. A. I. R. 1933 Oudh 246 =8 Luck 445. Admission by party is very strong proof against him unless the person making the admission explains that it was made under circumstances which do not make the admission binding on him 134 Ind. Cas 888=53 C. L. J. 222. Admission against interest of party making it must be regarded as true until it is clearly proved to be untrue A. I R 1933 Lah 885=34 P. L. R. 788 Admission made by a *pardanashin* lady in a document is not conclusive. ...on must be taken as a whole. .. 1934 Mad. 100=39 L W. 34. admission of the other party A. I. R. 1934 Lah 662=35 P. L R. 578 Admission in prior suit can be used in subsequent suit. A I. R. 1934 Lah. 527=35 P L. R. 463 ; see also A I R. 1934 Pat. 48=146 Ind. Cas. 937.

Cases.—68 Ind. Cas. 566 ; 4 Lah L J. 437 ; 45 Ind Cas 843 ; 22 C. 909 ; 1924 Nag. 281 ; 17 Ind. Cas. 961 ; 54 Ind Cas. 478

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuinenesss of a document produced is in question.

When oral admissions as to contents of documents are relevant.

...n statements as to any matter they relate to the contents ...ooley, 6 M. and W. 664) The as laid down in the above case. The above decision has been severely attacked in *Sanders* v. *Karnell*, 1 F. r. L. R 382 but in England it has survived their Lordships of the Judicial Committee observed : "They consider that it is a very verbal admissions of a sum due, without very clear evidence especially, when there are other means of proving the case, if a true one."

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given

Admissions in civil cases when relevant.

...aken to exempt any ...nce of any matter of

126.

Statement without prejudice.—"Communications, admissions or statements written or verbal, made by a party to an action pending the dispute of action and made expressly or impliedly 'without prejudice' with the object of compromise or settlement, cannot be given in evidence against the person making them. A letter written without prejudice protects from disclosure the whole of the correspondence of which it forms part." (*Paddock* v. *Foryester*, 67 R. R. 634 cited in Cockle ... civil cases. By this section the Court is pre- ... admission in a deed of compromise which was ... aside on the ground that the agent of one of the parties was not empowered to enter into it. 83 P. R. 1877.

Cases—*Vide* 20 C. W. N. 1217; 52 Ind. Cas. 348; 52 Ind. Cas. 443

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confessions—The word 'confession' as used in the sections of the Evidence Act relating to confessions, should not be construed as including a mere inculpatory admission which falls short of being an admission of guilt. 7 A. 646=A. W. N. 1885, 131. A confession may be defined as "an admission made at any time by a person charged with an offence, stating or suggesting the inference that he committed the offence." 16 P. R. 1886 Cr.; 51 P. L. R. 1905 Cr. An incriminating statement, which falls short of absolute confession, but from which the inference of guilt follows, is a 'confession'. 51 P. L R. 1905 Cr; 6 C. 509, (F. R); 14 B. 260 (F. B). It is admissible even when it is not sworn. 3 P. R. 1880 Cr.; see also 13 Ind. Cas 96.

To be taken with caution—A judge, who is to decide whether a confession is admissible in evidence or should be rejected, should exercise necessary all caution and vigilance, before admitting as voluntary, any confession tendered in evidence. I B. R. (1893-1900), 145; 31 P R. 1867 Cr.; 47 P. R. 1866 Cr.

Must be taken as a whole—The confession must be taken as a whole. 15 B 452. When confession contains extenuating as well as incriminating matter, the extenuating portion must be taken into consideration no less than the incriminating portion, except when there is evidence to contradict it. 4 P. R. 1872 Cr.; A. W. N. 1883, 148.

Scope.—In criminal cases a confession made by the prisoner can be given in evidence against him, if the prosecution show it was free and voluntary not otherwise. It will be held not to be free and voluntary if it were induced by any threat or promise made by a person in authority. Any expressions suggesting that it would be "better" for the prisoner to tell the truth import a threat or promise

[illegible]

ment might cause the accused to make an untrue confession. (*Powell, Ev.* 150). See also U. B. R. (1897-1901) vol. I. 147.

Inducement—An inducement need not be expressed; it may be implied. *R.* v. *Gilles*, 11 Cox. 69. When the inducement comes from the police constable, even there it is inadmissible. L B. R (1872-1892), 396. See also 221 P. L. R. 1911; I. L. B. R. 168; Rat. Un. Cr. C. 952; U. B R. (1872-1901) vol. I. 192; 75 Ind. Cas. 152.

Person in authority.—The term includes the prosecutor, officers of justice and other persons directly connected with the prosecution only. *R.* v. *Gibbons*, 1 C. and P. 97) The following have been held to be "person in authority"—magistrates,

even those not acting as such in the case, their clerks, coroners, police constables, warders and others having custody, of the prisoner, seachers, prosecutors and their wives and attorneys Masters and mistresses are only so considered if they are the mselves prosecuting, or the charge is connected with the employment. (*Cockle Case.* 189) See also 2 L. B. R. 316. A *panchayat* is a person in authority. 11 C. W. N. 904, *contra*, 4 Bom L. R. 785 The headman of village is a person in authority. 26 Ind. Cas 129.

Having reference to the charge against the accused—The offer of some merely collateral convenience, or temporal advantage unconnected with the result of the prosecution, or an appeal to a man's moral feelings is not such an inducement as will render a confession inadmissible The promise, or words, to have such effect, must have reference to the result of the prosecution suggesting a more favourable determination of the proceedings. *R* v. *Lloyd*, 6 C. & P 393.

Temporal nature—The "threat or promise" must offer some temporal advantage or disadvantages connected with the result of the prosecution in order to render a confession involuntary. Exhortations to confess on moral or religious grounds are not sufficient to exclude a confession. (*R.* v *Jarvis*, L. R 1. C C. R 96 ; Cockle Cas. 186).

Retracted confession—*Vide* 31 Ind. Cas 83, 34 Ind Cas 642 ; 26 C. W N. 1010

Persons in authority—Cases—Zamindars, *qua*-Zamindars are not persons in authority. 10 S L. R 140 A headman is a person in authority. 37 Ind Cas 314 A Lambardar is a person in authority. 4 Lah. L. J. 335 It includes the prosecutor. 26 C W N 54

Cases.—52 Ind Cas 881 ; 30 C L J 503 ; 23 C W N 886 ; 53 Ind Cas. 145 ; 20 Cr. L J 562, 70 P. L. R. 1918 ; 45 C. 557 ; 11 P. R. Cr 1918 ; 11 P. R Cr 1916 ; 37 Ind. Cas 814 ; 22 C. W N 461 ; 43 I C. 605 ; 22 Bom L R 1247 ; 54 Ind. Cas 881 ; 2 Lah. L J. 653 ; 32 C L J 204.

Confession to police officer not to be proved.

25. No confession made to a police officer shall be proved as against a person accused of any offence.

Notes—In upper Burma, insert—"Who is not a Magistrate" after the word "police officer"—*vide* s 4 (3) (e) of Act 13 of 1898

Police officer—The confession made to a police officer by an accused is not admissible against him ; *a fortiori* it is inadmissible against a co accused 12 Bom L. R 899, 10 C P L R Cr 16, L. B R (1872-1879) 479 ; 10 C. L J. 13 ; 3 M. L. T. 333 ; 14 Ind Cas 895

A *gang* appointed under the Burma Rural Police Act is a police officer. 1. L B. R. 65 ; L B R (1872 1892) 470 [illegible] L B R 78? [illegible] Cr L J 421. A confessi[illegible] ny offence is inadr[illegible] 15 Ind. Cas. 305 [illegible] N. 637 A statement made to the police, which does not amount directly or indirectly to an admission of any criminating circumstances, is admissible in evidence. 5 Bom. L. R. 312, 41 C 601 ; 14 C W. N. 593 An explanation, offered to the police by the accused in order to exculpate themselves is admissible in evidence 19 Ind. Cas. 508. The words "police officers" include also foreign police officers. 15 Ind Cas 800 A confession made to a stranger in the presence of a police officer is admissible in evidence 8. P. R [illegible] e officers. 76 Ind Cas. 654. Kotwar in C P. [illegible] A village headman in Burma who is not [illegible] 18 Ind. Cas. 540

Cases.—21 Bom, L R. 724 ; 48 Ind Cas. 883 ; 75 Ind. Cas 693 ; 3 P. R. Cr. 1918 ; 42 I C. 1002 ; 28 C. W N. 834 ; 41 I. C. 111 ; 57 Ind. Cas. 88 ; 55 Ind. Cas. 62

Confession by accused while in custody of police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.*

Legislative Changes—The explanation was added in this section by Act 3 of 1891.

[illegible], but not in the presence of a [illegible] L. J. 352. A confession made by [illegible] evidence Rat. Un. Cr. C. 855; 20 B. 165; 12 P. R. 1900 Cr. A choukidar is a police officer. 9 C. W. N. 474. The exclusion of confessional statements under this section is based on the presump- [illegible]. As soon as [illegible] presence of a [illegible] inadmissible [illegible] Magistrate's presence, or to the extent to which it is confirmed. 36 Ind. Cas. 479.

Cases.—21 C. W. N. 694; 19 Bom. L. R. 683; 50 Ind. Cas 431; 26 Bom. L. R. 706; 47 Ind. Cas. 429.

How much of information received from accused may be proved.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Scope.—The prov[illegible] such statements as properly fall within the [illegible] tion therein given. If they amount to confession, they ought to be excluded. 11 B. H. C. R. 242; 10 C. P. L. R. Cr. 25. The fact to be discovered by such a statement [illegible] tate induced in another by that [illegible] 321. Two men cannot make a [illegible] give information to the police [illegible] admitted under this section. 7 P. R. 1919 Cr; but see 36 Ind. Cas. 474. A statement made by the accused persons while in police custody in consequence of which arms are found buried in a field is [illegible]. 72 P. L. R. 1916. See also 32 Ind. Cas. [illegible] ction to the general rule must be very [illegible] 11 P. R. 1915. Cr.=16 Cr. L. J. 545.

Cases—13 A. L. J. 1077; 9 O. L. J. 190; 9 P. L. R. 1922; 20 A. L. J. 171; 19 C. L. J. 439; 42 Ind. Cas. 1002; 43 Ind. Cas. 111; 48 C. 557; 54 Ind. Cas. 479; 55 Ind. Cas. 685.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

28. If such a confession as is referred to in section 24, is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Notes.—When the legislature wished to make an exception to the general rule it did so by a separate section; this section accordingly declares under what circumstances a confession rendered irrelevant by s. 24 may become relevant. 2 L. B. R. 168.

Scope.—If the impression produced by the promise or threat is clearly shown to have been removed *e g* by lapse of time or by an intervening caution given by some person of superior (but not of equal or inferior) authority to the person holding out the inducement—a confession subsequently made will be strictly receivable. (*Phipson, Ev.* 231); 45 Ind. Cas. 705.

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* Act X of 1882.

accused is not on trial, his confession cannot be used. 11 P. R. 1900 Cr.; 10 C. L. R. 553; 15 P. R. 1911 Cr.; 22 Ind. Cas. 157.

Abetment.—*Vide* 39 P. R. 1885 Cr.; S. C. 143 Oudh.

Retracted confession.—Retracted confession unless corroborated cannot be the basis of conviction Rat. Un. Cr C. 108; 5 P. R. 1911 Cr.; 81 Ind. Cas. 62; 40 C. L. J. 551; 68 Ind. Cas. 401.

Magistrate in a Native State—A confession made before a Magistrate in a Native State cannot be admitted into evidence under this section. 16 Bur. L. R. 261.

Corroboration—53 Ind. Cas. 521; 43 B. 739; 81 Ind. Cas. 817.

Cases—20 A. L. J. 178; 65 Ind. Cas. 562; 22 C. W. N. 408; 46 Ind. Cas 842; 41 Ind Cas. 160; 57 Ind. Cas. 462.

Admissions not conclusive proof, but may estop.

31. Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

d in a deed of sale s only a rebuttable of each case. A W. N 1899, 142. Admission must be taken as a whole. 60 Ind. Cas. 483. Admission is not conclusive in itself. 134 Ind. Cas. 128=32 P. L. R. 248=A. I. R. 1932 Lah. 126. Person can prove that admission was mistaken or untrue. A. I. R. 1931 Oudh 246=8 O. W. N. 306.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

Cases in which statement of relevant fact by person who is dead or cannot be found, etc, is relevant.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

When it relates to cause of death;

(1) When the statement

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

or is made in course of business;

(2) When the statement was made of busines any entry kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usally dated, written or signed by him.

or against interest of maker;

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, or matters of general interest;

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

or relates to existence of relationship;

(5) When the statement relates to the existence of any relationship *[by blood, marriage or adoption]* between persons as to whose relationship, [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in Will or deed relating to family affairs;

(6) When the statement relates to the existence of any relationship *[by blood, marriage or adoption] between persons deceased, and is made in any Will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13. clause (a).

(7) When the statement is contained in any deed, Will or other document which relates to any such transaction as is mentioned in section 13, clause (*a*).

or is made by several persons and expresses feelings relevant to matter in question.

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a*) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

(*b*) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day he attented A's mother and delivered her of a son, is a relevant fact.

(*c*) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*) The question is, whether a ship sailed from Bombay harbour on a given day.

[illegible] written by a deceased member of a merchant's firm by which she was [illegible]

(*g*) The question is, whether A, a person who cannot be [illegible] on a certain day. The fact that a letter written by him is dated on that day is relevant.

(*h*) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

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* These words in s. 32 cls. (5) and (6), were inserted by the Indian Evidence Act Amendment Act (18 of 1872).

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When it relates to cause of death;

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement

or is made in course of business;

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letter or other document usally

(3) When the statement

or against interest of maker;

the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, or matters of general interest;

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

or relates to existence of relationship;

(5) When the statement relates to the existence of any relationship *[by blood, marriage or adoption]* between persons as to whose relationship, [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in Will or deed relating to family affairs;

(6) When the statement relates to the existence of any relationship *[by blood, marriage or adoption] between persons deceased, and is made in any Will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

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(*b*) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day he attented A's mother and delivered her of a son, is a relevant fact.

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A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was [illegible] to whom the cargo was consigned, [illegible] Bombay harbour, is a relevant fact.

[illegible] A for certain land.

[illegible] e rent on

[illegible] circum-

[illegible]

(*g*) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(*h*) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

* These words in s 32 cls. (5) and (6), were inserted by the Indian Evidence Act Amendment Act (18 of 1872).

(*i*) The question is whether a given road is a public way.
A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k*) The question is, whether A, who is dead, was the father of B.
A statement by A that B was his son, is a relevant fact.

(*l*) The question is, what was the date of the birth of A.
A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(*m*) The question is, whether, and when, A and B were married.
An entry in a memorandum-book by C, the deceased father of B of his daughter's marriage with A on a given date, is a relevant fact.

(*n*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Scope—This section is also an exception to the hearsay evidence. Secondary evidence of any oral statement is called hearsay. The repetition by a witness of that which he was told by some one else who is called as a witness is a hearsay, and is therefore, as a general rule, inadmissible. The reasons for this rule are obvious. We can generally trust a witness who states something which he himself has either seen or heard ; but when he tells us something which he has heard from another person, his statement is obviously less reliable and satisfactory. A multitude of probable contingencies diminish its value The witness may have misunderstood or imperfectly remembered, or even may be wilfully misrepresenting the words of the third person ; or the lattter may have spoken hastily, inaccurately or even falsely. Moreover the person who is really responsible for the statement did not make in on oath ; he was not cross-examined upon it, and the Court had no opportunity of obsserving his demeanour when he made it. It is a fundamental principle of our law that evidence has no claim to credibility, unless it be given on oath or what is equivalent to an oath, and unless the party to be affected by it has an opportunity of cross-examining the witness. (*Powell, Ev.* 305). There are various

[illegible]

case appears to the Court unreasonable, are admissible (1) when it relates to the cause of his death, or (2) when it is made in course of business ; or (3) when it is made against the interest of the maker ; or (4) when it gives opinion as to public right or custom or matters of general interest ; or (5) when it relates to existence of relationship ; or (6) when it is made in Will or deed relating to family affairs ; or (7) when it is made in document relating to transaction mentioned in section 13 clause (*a*) ; or (8) when it is made by several persons and expresses feelings relevant to the matter in question. Before admission of statements under s. 32, evidence must be adduced that matters of statements are dead or are not available. A. I. R. 1933 Rang. 212.

Verbal.—Includes sign 7A.

Cause of death.—In England [illegible] only in trials for murder or man-slaughter mac[illegible] The grounds of admissions are (1) death (2) necessity and (3) the sense of impending [illegible] oath. But this clause [illegible] L. R. 278. Moreover [illegible]ctive of the nature of [illegible] not limited to cases in [illegible]ury. It is admissible in all criminal cases 3 N. W. P 2 2 : 13 P. R 1889 Cr ; 25 B 45 ; 8 C. 211 ; 6 W. R Cr 75 ; 19 W. R. Cr. 44 ; 9 W. R. 211. Cases are not uncommon in this country of false deposition being made by a dying man. 4 Ind. Cas. 1127. A Court should receive a dying declaration with caution. 117 P. R. 1866 ; see also 4 P. W. R. 1909 = 1 Ind. Cas. 100 ; 2 Weir. 753. Such declarations need not be made in the presence of the accused. 2 Weir. 750. Oral evidence of such declarations is admissible. 2 Weir. 755 ; 2 Weir 753 ; 6 C. W. N. 621.

Cases.—67 Ind. Cas 577 ; 49 C. 358 , 49 C. 600 ; 4 Bom. L. R. 434 ; 20 Ind. Cas. 220 ; 34C. 698 ; 23 Ind. Cas. 195 ; 2 Bom L. R. 1129 ; 6 C. W. N. 72 ; 8 C 211 , 9 P. R. 1900, Cr. ; 18 P. R. 1886, Cr ; 17 P R. 1886 Cr. 17 P. R. 1901 Cr. ; 29 P. R. 1887 Cr ; 15 W. R. Cr. 11 ; 5 Lah. 305.

Course of business—The grounds for reception of such evidence is the presumption of truth which arises from the mechanical and generally disinterested nature of entries made in the course of duty, and from their constant liability, if false, to be detected by the declarant's superiors (*Phipson, Ev.* 250) The phrase 'course of ... kind, such ... employment ... ess referred to may be of a temporary character. 13 C. W. N. 71=1 Ind. Cas. 376. The law under this clause does not require corroboration as under s. 34. 16 C. L. J 24. Extract from school register is ... Bom. L R 111=A. I R. 1931 ... evidence A I. R. 1933 Pat. 658. ... R. 1933 Pat. 6=14 P. L T 509 ... be called. 11 O. W N. 1923=152 Ind Cas. 468.

Cases.—4 Lah. L. J. 36 ; 1922 P 111=67 Ind. Cas. 57 ; 18 N. L. R. 85 ; 46 B. 753 ; 9 B. L R App. 42 ; 77 I. C 798 ; 26 Bom. L. R. 563 ; 199 Pat. 352 ; 48 Ind. Cas. 375 , 25 C. W. N. 908 ; 62 Ind. Cas 946

Clause (3).—The reception of this evidence is upon the presumption that what a man states against his interest is probably true. But the interest involved must be pecuniary or proprietory. Any statement by a person tending to show that he owes money, or has received money, owing to him, is considered to be against his interest (*Highman* v. *Ridgway*, 10 East, 109 ; Cockle Cas. 196). In Sussex Peerage Case, 11 C. and F. 1 ... made under circumstances, whi ... liable to criminal prosecution, ... the Indian Legislature departed ... that such statements are relevant If any part of a statement by a deceased person is against his interest, the whole statement is admissible. *Taylor* v. *Witham*, L R. 3 Ch. D 605. The declarations must also have been against such interest at the time they were made, it is not sufficient that they might possibly turn out to be so afterwards. (*Smith* v. *Blakey*, L. R. 2 Q. B 326 ; *Massy* v. *Allen*, 13 Ch. D. 558 ; *Edwards.* v. *Tollemache*, 14 Q. B. D. 415)—*Phipson*, 241. A statement by a deceased landlord that there was a tenant on the land, is a statement against the landlord's proprietory right. 31 C. 965 ; see also, 23 B. 63 ; 32 C. 6 ; 11 Ind. Cas. 380 ; 35 C. 751 ; 30 I. A. 94=C. W N. 465 (P. C.) ; 86 Ind. Cas. 314 ; 78 I. C. 1033 ; 78 Ind. Cas. 219 ; 53 Ind. Cas. 863 ; 63 Ind. Cas. 685. Statement by a person against his pecuniary or ... 106=30 N. L. R. 192=148 ... ounded by property of anoth- ... 1934 Pat. 617. A statement which would make a person liable to criminal proceedings is admissibe. A. I. R. 1934 All. 618 ; see also 38 C. W. N. 1015.

Clause (4).—The grounds of admission are—(1) death ; (2) necessity of ancient facts being generally incapable of direct proof ; and (3) the guarantee of truth afforded by the public nature of the rights, ... and to render mis-statements difficult by ... (*Phipson, Ev.* 257). Public rights are right... river, etc. General rights are those affecting any considerable section of the community, *e. g*, questions of boundaries of a parish or manor. (*Ibid*). In proof of public or general rights or customs or matters of public or general interest, statements made by a deceased person of competent knowledge as to the existence of such rights, etc, and as to the general reputation thereof in the neighbourhood, if made "*ante litem motam.*" are admissible. (*Weeks* v. *Parks*, 1 M. & S. 679 ; Cockle Cas. 212 ; 32 P. L. R. 910=12 Lab 499). *Such evidence* is not admissible as to private right. 25 B. 433. Public or general right must be ... of a particular manor. ... ed by many persons in ... by several persons ... f private rights. ... al enjoyment of

the right be proved. (19 L.J.Q B. 388=15 Q.B. 791 ; Cockle Cas. 215). But it is only to be received as showing a general reputation and not as evidence of particular facts. R. v. *Bliss*, 7 L.J. Q B 4 ; *Mercer* v. *Dunne* 1904 ; 2 Ch. 534 Persons whose statements are receivable in evidence as declarations must be shown to have been "competent declarants" that is, they must have been so situated as to the place in questions, residence, duty or other connection that it may be concluded they had both the means and the motive for giving a true account of the matter (*Newcastle* v. *Broxtowe*, 4 B. & Ad. 237 ; Cockle Cas. 219). But this clause is not applicable to a case where the evidence is required to prove a fact in issue, and not mearly a relevant fact. 15 B. 565.

Clause (5)—According to English law, the statements verbal or written, and conduct of deceased persons, who were related by blood or marriage with a family in question, if made "*ante litem motam*," are admissible to prove relationship, or family succession, or facts upon which such matters depend, such as births, marriages and deaths. (*Vide Cockle Cas.* 202 ; *Berkely Peerage Case*, 4 *Campbell* 401). A controversy in a family, though not at that moment the subject of a law suit, is sufficient to exclude evidence of declarations as to pedigree made at the time of such controversy on the ground that they were not made "*ante litem motam*". (*Butler* v. *Mountgarrett*, 7 H. L. Cas. 633 ; *Cockle Cas.* 206). In a case where there is no question of relationship, no question of descent, no question of predigree, none as to the position of any person in any family, such evidence is not admissible. *Harris* v. *Guthrie*, L. R. 13 Q. B. D. 818. According to English law statements made by servants or intimate acquaintances, whatever their position or knowledge may be, are not admissible. *Johnson* v. *Lenson*, 9 Moore. 183 ; *Cockle Cas.* 209. But therein the Indian Legislators departed also from the English law and laid down that statement of persons having special means of knowledge would be relevant. So a statement as to the age of member of a family made by another member is no doubt admissible after the latter's death under this clause. 25 M. 183. But special means of knowledge should be shown. 10 Ind. Cas. 199. The statement in a pedigree made by a deceased member of one branch of a family, regarding the descendants of another branch thereof, before any dispute arose as to the latter, is relevant and admissible in evidence. 32 C. 6. But this clause does not cover statements of facts made by interested parties in denial, in the course of litigation of pedigrees set up by the opposite parties. 9 A. 467. The effect of the section is to make a statement made by a deceased person relating to the existence of any relationship by blood, marriage or adoption, admissible to prove the facts contained in the statements on any issue. 24 C 265=1 C. W. N. 270. A family priest's statement is also admissible. 4 C L. R 473. But a Muktear's statement is not admissible. 12 C. 219=12 I A. 183 (P. C) ; see also 20 C 758 ; 13 C. W. N. 1 P. C. ; 20 C. 115 ; 23 A. 94 P C =29 I. A. 1 ; 8 Ind. Cas. 728 ; 27 I. A. 238 ; 66 Ind. Cas. 66 ; 9 O. L. J. 186 ; 11 O. L. J. 164 ; 22 A. L. J. 657 ; 10 O & A. L. R. 1226 ; 10 L. W. 67. Statements by deceased that mother of children was married to him is evidence of marriage. 1933 A. L. J. 483=55 A.
missible under this clause. A. I. R. 193
12 M L J 133. For proving relationsh
and dependants of family are admissib
116. Oral evidence of pedigree is trust[illegible]
ary evidence. A. I. R. 1931 Oudh 246=8 O. W. N. 306=131 Ind. Cas. 903 ; see also A. I. R 1931 Oudh 177=8 O. W. N 349. Decloration as to relationship made *post litem motam* is admissible in evidence 8 O. W. N. 349=A. I R. 1931 Oudh 177 , see also A. I. R. 1932 Mad. 198=55 M. 40 ; A. I. R. 1934 Oudh 210=148 Ind. Cas 1041. Before proving pedigree, the requirements of s. 32 must be fulfilled. A. I. R. 1934 All. 117 ; A. I. R. 1934 Pesh 78 ; A. I. R. 1934 All. 117. Statement as to age by adoptive mother of her adopted son is admissible. A. I. R. 1934 All. 406 (F. B.) ; see also A. I. R. 1932 Mad. 198.

ssible under this clause. 17 C.
include sucd a pedigree as is
, nor do they indicate that the
cerned. In order that a
lause, it is not essential
s of knowledge. 63 Ind.
[illegible] *ante litem motam* are
admissible. A. I. R. 1931 P. C. 45=12 Lah. 336=58 I. A. 188.

Clause (7).—A deed of mortgage containing an assertion of title as owner by the mortgagor is relevant under s. 13 as evidence of the title asserted. Where the mortgagor is dead, the recitals in the deed as to how he got the title are also evidence under this clause as statements made by deceased person in a document relating to transaction mentioned in s 13. 1921 M. W. N. 560.

Clause (8)—The meaning of this clause is that where a number of persons assemble together to give vent to a common statement expressing the feelings or impressions made in their minds at the time of making it, that statement may be repeated by the witness and is evidence. 23 W. R. 36 C. R.

Relevancy of certain evidence for proving, in subsequent proceeding the truth of facts therein stated.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way *by the adverse party, or if his presence cannot be obtained without an* amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding

Explanation—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Scope.—It has long been settled as one of the exceptions to the general rule excluding hearsay that the testimony of a witness given in a former action or at a former stage of the same action is competent in a subsequent action or in a subsequent proceeding in the same action, where it is shown that the witness is dead or that a valid legal reason exists for his non-production, that the parties and questions in issue are substantially the same, and that such former testimony can be substantially reproduced upon the second hearing. (*Burr Jones* §336).

Parties—The rule is that such evidence is proper, not only when the point in [illegible] me parties, but also for or [illegible] lood, privies in state or pri- [illegible] ejected, although there were [illegible] when the issues are sub- [illegible] ond suit had the opportunity [illegible] be substantially the same, [illegible] ish this. (*Burr Jones* § 338). In two suits the parties must be the same or their representatives in interest. 12 C. 627 ; see. 7. C. 42 ; 8 A. 672 ; A. W. N. 1896, 182.

Form of preceedings—If the parties and the issues are the same in each [illegible] ony that the form of the second [illegible] or that the former trial should [illegible] stimony is offered. The rule [illegible] party since deceased which it is subsequently desired to use. A testimony given in a preliminary examination on a criminal charge may be admitted at the trial. (*Burr Jones* §§ 339). Evidence in section 9 case is admissible in a subsequent suit. 23 C. 44. Depositions given before a counsel is admissible. 3 B 334.

Criminal cases—The application of this section in criminal cases ought to be confined within the narrowest limits 17 Bom. L. R. 570. See also 18 Bom. L. R. 214 ; 25 O. C. 142 ; 2 A. 696 ; L. B. R. (1872-1892) 134 ; 3 B. 334 ; Rat. Un. Cr. C.

How much of a Statement is to be proved.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters of papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

Principal—If a part of the conversation or transaction has been given in direct testimony, the remainder, so far as it is relevant, may be called out by the cross-examination, as the inquiry and answer in such case may tend to impeach, rebut, explain or qualify the testimony already given.
glean out certain facts from his witness, whicl
false colouring to the matter about which he
from the sifting process of cross-examination by
shown (*Burr Jones, Ev.* § 822)

Judgement of Courts of Justice when relevant.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

Judgment—Judgments are of two k
former term seems never to have been
stood to apply to all judgments affectin
person or thing; *e g.* Admiralty judgme
Court decrees, grant of probate and adm
ruptcy. Such judgments are conclusive
strangers. Judgments in *personam* are all
so affecting status Such judgments bind
issue. But all judgments are conclusive
distinguished from the facts upon which t
ments whatever are conclusive proof as ag
state of things which they actually effect wl
effected is a fact in issue or is deemed to be relevant to the issue. (*Stephens' Digest* § 40).

Scope.—This section lays nown that judgment, order or decree in a previous suit is a relevant fact, *i. e.* admissible in evidence if it operates as *res judicata* or prevents any Court from taking cognizance of a suit or holding a trial. According to the phraseology of English lawyers such judgments are admissible when they
operate as estoppel by record A p
which judgment was given or who cl
is estopped from denying the facts
judgment be pleaded as estoppel.
persons who were neither parties nor pi
estopped from denying matters which
legal proceedings or which were incide
by argument from the judgment *The I*

intended to include all judgments which by law operate to prevent a Court, whether civil or criminal from taking congnizance of a suit, or trying any particular issue, and admits as evidence all judgment *inter partes* which would operate as *res judicata* in a second suit. 6 C. 171. Judgment of trial Court appealed against is inadmissible

in evidence 34 C W N 1113=133 Ind Cas 573=A. I. R 1931 Cal. 239. Previous *judgment cannot be used as evidence to decide points which are at issue in different* case except in cases under ss 40 and 42 A I. R 1933Pat. 690. Whether certain judgment pronounced in another case is or is not irrelevant is to be governed by ss. 40 to 42 136 Ind Cas. 577=11 Pat 50=12 P L T 582=A. I. R. 1932 Pat. 105, see also A I. R 1932 Mad 254=55 M 346=62 M. L J 230; 9 O. W. N 813=6 Luck 710=A I R 1932 Oudh 342

Cases.—A finding in a former suit where the question was tried between all the parties to the subsequent suit, is admissible as evidence. 22 W R. 457. "It is not competent for the Court, in the case of the same question arising between the same parties, to review a previous decision " *Per Lord Macnaghten*, in *Badar Bee* v *Habin Merican Noordin* (1909) A C at p 623

"The plea of *res judicata* applies except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence might have brought forward at the time " *Henderson* v *Henderson*, 3 Hare, 115

Relevancy of certain judgments in probate, etc, jurisdiction

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation ;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment (order or decree) declares it to have accrued to that person ;

that any legal character which it takes away from any such person ceased at the time from which such judgment, (order or decree) declared that it had ceased or should cease ,

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, (order or decree) declares that it had been or should be his property.

Legislative changes.—The words within brackets have been inserted by Act 18 of 1872.

Scope—These are judgments *in rem.* They are conclusive on every body, and as such admissible against every body. Such adjudication, being the solemn delaration of the properly accredited Court, which has the best right so to adjudicate, concludes not merely the parties to the action and their privies, but all persons, from asserting the contrary (*Powell, Ev* 66.). Such judgments are conclusive "not merely as to the point actually decided, but as to a matter which it was necessary to decide and which was actually decided as the groundwork of the [illegible] at issue." *Per Coleridge, J* in *R.* [illegible] ust clearly appear that a decision [illegible] lgment *Concha* v *Concha*, 11 App. Cas 511 *Ballantyne* v *Mackinn*, 1896 2 Q B. 455. Judgments *in rem i. e.* affecting the status of a person or thing *e g.*, a decision of a Prize Court, Probate, [illegible] t, bind all the world. A [illegible] dgment *in rem.* (*Ex parte* [illegible] are binding not only on [illegible] not only on the tribunals [illegible] other countries ; but such [illegible] not carry a manifest error on its face and must not be contrary to natural justice. (*Powell, Ev.* 451). A final judgment or order of a competent Court, in the exercise of probate juridiction as

conferring the status of executor on the grantee of a probate is conclusive proof of the existence of such status and the fact that the Will is genuine. It operates as a judgment *in rem*, and its effect cannot be nullified except by a proceeding for revocation of probate 31 C. 357 = 8 C. W. N. 197; see also 14 C. 861; 16 M. 380; 14 P. R. 1912; 22 A. 270 (F. B.) The expression "legal character" when it has reference to a judgment of a Court of Probate, means the status of an Administrator or Executor and that only though, when it has reference to a Matrimonial Court, it includes wifehood and widowhood, and a judgment of a Court of Probate is conclusive proof that the person to whom letters or probate have been granted has been clothed with the powers and the responsibilities of the deceased and with nothing else; and a question of status decided b
raised again (U. B. R. 1910, 4th Qr. 61).
construed narrowly. A I. R. 1931 Mad. 441 (F.
insolvency Court, creditor of insolvent does n
fic thing" *Ibid.* Declaration of title to
ade not against person but absolutely.
A. I. R. 1933 Mad. 624. A declaration that the defendant is no longer the wife of the plaintiff is not a judgment *in rem.* 36 Bom. L. R 1021; see also A. I. R 1933 Rang. 250. Whether judgment refusing probate of Will is judgment *in rem.* A. I. R. 1933 Mad. 114.

42. Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right-of-way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C
right

facts
cide—

as between strangers;

as between parties and privies in suits where the issue is different even though they relate to the same occurrence or subject-matter;

or in favour of strangers against parties and privies.

But a judgment is deemed to be relevant as between strangers:

(1) if it is an admission, or

(2) if it relates to a matter of public or general interest, so as to be a statement under s. 13.—*Stephen's Dig.* § 444.

Where any question of rights or custom is to be decided, opinions of persons, who would be likely to know its existence are under s. 48 admissible in evidence. A judgment of the High Court regarding the transferability of tenures held under similar conditions in an adjoining village of the same *perguna*, is evidence of the usage of transferability 23 C. 427. When a question of status is in issue judgments and orders between the parties in mutation cases, succession certificate cases, rent suits for possession, etc, are admissible in evidence 1924 Nag. 387. Judgment
16 P. L. R 106 Previous judicial

1932 Bom 398 = 56 B. 298 = 34 Bom. L. R. 802. Judgment declaring person to be auction purchaser though not *inter partes* is admissible. A. I. R. 1933 Cal. 222 = 56 C. L. J. 369.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Judgments, etc., other than those mentioned in sections 40 to 42 when relevant.

Illustrations.

(*a*) A and B separately sue C for a libel which reflects upon each of them C in earh case
are such
A obt
out his ju
. (*b*) A prosecutes B for adultery with C, A's wife.
B denies that C is A's wife, but the Court convicts B of adultery.
Afterwards, C is prosecuted for bigamy in marrying B during A's life-time. C

conviction.
As between A and C, the judgment against B is irrelevant.

(*d*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(*e*) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(*f*) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

Legislative changes.—Illustrations (*e*) and (*f*) were added by Act 3 of 1891.

Scope.—"Having now disposed of judgments which render the matter *res judicata* between the parties, judgments which from their special character are conclusive all the world, and judgments which as relating to matters of a public nature, are relevant though not conclusive, between strangers to the suit, we come to the general rule of exclusion *viz* that all other judgments are irrelevant. To this rule however, there is a highly important limitation. A judgment, though inadmissible for proving the truth of what it asserts, may be valuable as evidence for some other purpose. Its *very existence may be a fact in issue, and then of course,* evidence of it may be given ; or it may be a fact relevant within some one of the classes of relevant facts given in the Act, and then again, evidence of it can be given." (*Cunningham, Ev* 190) "The cases contemplated by s. 43 are those where a judgment is used not as *res judicata* or as evidence more or less binding upon an opponent by reason of the adjudication which it contains. But the cases referred to in
of any
As fo.
forgery and B justified it upon the ground that the alleged slander was true, the

that is, in the sense that they can have any such effect or operation as is mentioned in those recited sections as *qua* judgments, orders and decrees, but I do not ... this make them absolutely inadmissible, when they are the best evidence of ... thing that may be proved *aliundi*. Decrees not *inter partes* are not evidence ... under ss 13 and 43. A. I. R. 1933 Cal. 21=36 C. W. N. 866 ; see also ... N. 1113=A. I. R. 1931 Cal. 239 ; A. I. R. 1931 Pat. 386=12 P. L. T. 647= ... 1224 ; A. I R. 1934 Cal. 288. In a suit for damages for malicious ... Civil Court should undertake independent enquiry and not take into consideration grounds of acquittal in Criminal Court. A. I. R. 1933 Mad. 429= ... 65 M. L. J 146

Cases—Decrees in former suit are relevant under this section ... to bind those who are not parties to the suits. 61 P. R. 1875 A judgment ... the plaintiff and their parties is not admissible though the facts ... support plaintiff's title disputed in the present suit. 1925 Pat ... of a Criminal Court is inadmissible in evidence. 1925. Rang. 142

44 Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment, or incompetency of Court may be proved.

Scope—In the case of the *Duchess of Kingston's Case*, 20 H. S. T. 355, *Sir William De Grey, C. J* observed: "Yet like all other acts of the highest judicial authority, it is impeachable from without; although it is not permitted to show that the Court was mistaken, it may be shown that they were misled. Fraud is an extrinsic collateral act, which vitiates the most solemn proceedings of Courts of justice. *Lord Coke* says: 'It avoids all judicial acts, ecclesiastical or temporal.' This section lays 27 C 11= nd-ing. M 228. the allega ion does not enumerate the grounds on which a decree can be attacked by a separate suit. 9 A L. J. 1; see 26 A. 272; 27 C 11; 21 B. 205; 3 N. L. R. 185; 8 Ind. Cas. 1 t

1931 A L J 653=53 A 747=A. I. R. 1931 All 689

Judgments in rem—Having regard to the wide terms of this section it is possible to say that it is not open to a Court other than the Court from which a grant has been issued in cases of fraud or collusion to deal with the matter and decide whether the grant has been obtained by fraud or collusion. But the better course in such cases would be when it is open to the party alleging fraud to apply to the Court from which the grant issued to stay the suit to enable an application to be made to revoke the grant. 25 C. W. N. 207.

OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

45 When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting [or finger impressions,*, the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] † [or finger impressions]* are relevant facts,

Opinions of experts.

Such persons are called experts.

Illustrations.

(*a*) The question is whether the death of A was caused by poison.

The opinion, of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind, usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different p rsons, are relevant.

* The word "or finger imp essic were added by the Indian Evidence A as to whether "finger impressions" *India*, 1898, Pt. vi. p. 24.

† The words within brackets in s. 45 were inserted by the Indian Evidence Act Amendment Act (18 of 1872).

Opinion of Expert—The opinion of an expert by itself may be relevant but would carry little weight with a Court unless it is supported by a clear statement of what he noticed and on what he based his opinion. The expert should if he expects his opinion to be accepted, put before the Court all the materials which induced him to come to his conclusion, so that the Court although not expert, may form its own judgment on those materials The mere mention that certain kind of tests known as Binet and Simon tests were applied and certain results were obtained might be relevant as a piece of evidence but would not be conclusive A. I R 1934 All 273=56 A 428=1934 A L J. 1129 It cannot be said that no special weight can be attached to Doctor's opinion as regards a person's age A. I. R. 1934 Oudh 32=35 Cr L J 498 Experts should not depose as to results of their opinions. 64 M. L J 193=1933 A L. J. 393=A. I R 1933 P. C. 26 (P. C.). Opinion of expert that document is type-written on same machine as another is not admissible. 145 Ind Cas. 481=1933 A L J 799=34 Cr. L J 967=A I R 1933 All 490; but see A I R 1933 All 498=1933 Cr C. 433 Expert must be skilled and possess adequate knowledge His opinion on facts within his science is admissible. A. I. R. 1931 P C. 189 (P C)=131 Ind Cas 771 Expert evidence is to be received with caution. A. I R 1931 Oudh 298=8 O W N. 627=132 Ind. Cas 259 Expert evidence is generally prejudiced 114 Ind Cas 331=34 P L R 719=34 Cr. L J 735=A. I. R 1933 Lah 561 Where one expert is contradicted by another, their evidence has little value A I R 1933 Lah. 885=34 P. L. R. 788=144 Ind. Cas 497. Where no data is given to support opinion of expert, evidence should be rejected A. I R. 1931 Lah 364=33 P L. R. 1100=135 Ind Cas. 183. Where signature is in language which the expert, cannot read or write, his opinion is of very little value. A I. R. 1933 Pat 559=1933 Cr. C. 1259 ; see also A. I. R. 1934 All 990 Where no opportunity was given to parties to examine expert, his bare statement is not admissible A. I. R. 1933 Pat. 159=141 Ind. Cas. 767 ; A. I. R. 1932 Pat. 352 , but see A I R 1934 Lah 230=35 P L. R. 109 Conviction should be based on uncorroborated opinion of expert as regards thumb-impression or handwriting A I R 1931 Cal 441=32 Cr. L J. 1001=54 C. L J. 107 ; A I. R. 1931 Lah 408=132 Ind Cas. 185 ; A. I R 1932 Lah. 481.

Scope—An expert witness is one who has devoted time and study to a special branch of learning, and thus is specially skilled on those points on which he is asked to state his opinion His evidence on such points is admissible to enable the tribunal to come to a satisfactory conclusion An expert may be called to answer questions on any matters of science, art, medicine, architecture, handwriting, valuations or foreign law—indeed any matter on which special skill or learning is necessary in order that a reliable opinion may be formed He need not be a paid professional expert who makes a living by giving such evidence, but he must have devoted [illegible] t to render his evidence trustworthy. The [illegible] an expert witness ; the jury decides on the [illegible] 41). The matters upon which such opinion [illegible] x, causes of death, insanity, effects of poison, genuineness of works of art, value of articles, genuineness of hand-writing, proper navigation of vessels, meaning of trade terms, foreign law, etc. And in support of such opinion evidence the witness may prove experiments, inspections and other acts upon which he bases his opinion although they were made or done in the absence of the party (See *R.* v. *Heseltine*, 12 Cox. 404). *Cockle Cas. Ev.* 119. An [illegible] ty. *Nelson* v. *Bridport*, 8 Beav. 527 ; [illegible] The opinions of experts are not bind- [illegible] ot with the experts, that the determina- [illegible] testimony is a matter to be determined by the jury, and it will be proportionate to the soundness of the reason adduced in its support 1 C W N. 465 , 32 C 759.

Cases—To base a conviction on the evidence of an expert in hand-writing as a general rule, is very unsafe. There may be cases in which the hand-writing is of such a peculiar character that the conclusion as to the identity of the writer is irresistible 1 A L J. 184=9 Cr. L. J 498 ; 15 Ind. Cas 979. Comparison of hand-writing is permissible in criminal no less than in civil cases 2 Weir. 759. It is not right to assume that a Sub-Registrar is an expert in the matter of thumb-marks. 2 Weir 760 The evidence of an expert in hand-writing is inadmissible, if there is no comparison with proved or admitted hand-writing in open Court in the presence of the party affected 16 C W N. 812=14 Ind. Cas. 753=39 C. 606. The value of

ordinary or non-expert oral evidence mainly rests on the credibility of the witness—his inclination and capacity for telling the truth ; the value of expert evidence rests on the skill of the winess—the extent of his competency for forming a reliable opinion. 3 N. L. R. 1 = 5 Cr. L. J. 220. A medical man who had not seen the dead body and who had not been pres
opinion about the cause of death,
as spoken to by the medical man
the signs spoken to by him as I
mortem examination. 15 C. 589. See 6. O. L. J. 178 ; 3 Lah. L. J. 110. Evidence of an expert should be approached with considerable caution especially where much depends upon such evidence. 1. C. L. J. 385 ; 1 A. L. J. 444. See 9 C. 455 ; 13 O C. 1 ; 4 L B. R. 125 But if he has not been cross-examined the weight of his evidence is not diminished. 55 Ind Cas. 273.

Facts bearing upon opinions of experts.

46. Facts not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(*a*) The question is whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b*) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Scope—Facts not otherwise relevant, have in some cases been permitted to be proved as supporting or being inconsistent with the opinion of experts. (*Step. Dig. art 50*). Facts although otherwise irrelevant, may be given in evidence in corroboration, illustration or rebuttal of opinion So on cross examination he may be asked *inter alia*, whether he has not expressed opinions inconsistent with his present testimony and if he deny the fact it may be independently proved. (*Phipson, Ev.* 347).

Opinion as to handwriting when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written ldressed to that person, or when, purporting to be written by that

Illustration.

The question is whether a given letter is in the handwriting of A, a merchant in London.

B. is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him C is B's clerk, whose duty it was to examine and file B's correspondence D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the hand writing of A are relevant, though neither B, C or D ever saw A write.

Scope—Handwriting may be proved not only by the person who saw the particular document signed, but also by any person acquainted in any manner with the handwriting of the person said to have signed the document in question *e. g.*

by (a) having seen him write at any time, (b) having received documents purporting to be in his handwriting, or (c) having, in the ordinary course of business, observed or dealt with documents purporting to be his handwriting. *Doe* v *Suckermore*, 7. L J. K. B. 33; *Cockle's Cas.* 327 "The only evidence of handwriting which is entitled to be called direct is the evidence of a witness who proves that he himself wrote or signed the document in question or that of a witness who proves that he saw the document signed or written. All other evidence of handwriting must rest in greater or less degree upon inferences drawn from the appearence of the writing in question or other circumstances" (*Wills, Cir. Ev.* 184). Disputed handwriting can be proved under ss 73, 47 and 45 Where Court finds signature true on comparison, expert evidence can be dispensed with. A. I R. 1932 Bom. 588=34 Bom. L. R. 1371. Handwriting cannot be proved by a person who has with him only one letter of the person whose handwriting is to be proved A I. R. 1934 Nag. 204=1934 Cr. C. 898.

Cases—A witness need not state in the first instance how he knew the handwriting, since it is the duty of the opposite party to explore on cross examination the sources of his knowledge, if he be dissatisfied with the testimony as it stands. It is permissible and may often be expedient that the matters referred to in the explanation should be elicited on the examination-in-chief. Yet, it is within the power of the presiding Judge and often may be expedient to permit the opposite advocate to intervene and cross-examine so that the Court may be in a position to come to a definite conclusion on adeqate materials as to the proof of the handwriting. 5 Bom L R. 663=28 B 58 The ordinary methods of proving handwriting are (i) by calling as a witness a person who wrote the document or saw it written, or who is qualified to express an opinion as to the handwriting by virtue of s 47; (ii) by a comparison of handwriting as provided in s 73; and (iii) by the admission of the person against whom the document is tendered. A comparison of handwriting is a mode of ascertaining the truth which ought to be used with very great caution 26 C. W N. 113. The opinions of those who have not carefully studied the art of caligraphy is not as a rule of very great utility. 64 Ind. Cas. 234.

Opinion as to existence of right or custom, when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Scope—By s 98, evidence may be given with reference to a document, to show the meaning of technical, local and provincial expressions, abbreviations and words used in a peculiar sense. For this purpose the opinions of persons having special means of knowledge on the subject would be the best evidence. (*Cun. Ev* 202). Section 32 clause (4) makes the statement of dead persons, as regards the existence of public right or custom or matters of public or general interest, relevant. These are all exceptions to the rule of rejection of opinion evidence. So the statements made by persons who are in a position to know of the existence of a custom or usage in their locality are admissible under this section. 26 C 184. A general custom or general right may be proved by evidence, under this section—by the opinions of person who would be likely to know of its existence, if it existed; such opinions are relevant, but such opinions must be given by witnesses who gave evidence 1 L. B. R. 80. It is admissible evidence for a witness to give his opinion on the existence of a family custom. 23 A. 37 (P. C). See 10 C. W. N 730 P. C. 5 C. 744 P. C.; 23 C. 427; 12 C. W. N. 74 P. C; A. I. R. 1932 Lah 582, A. I. R. 1933 Oudh 246; A. I. R. 1931 Oudh 89.

Opinion as to usages, tenets, etc. when relevant.

49. When the Court has to form an opinion as to—

the usages and tenents of any body of men or family,

the constitution and government of any religious or charitable foundation, or
the meaning of words or terms used in particular districts or by particular classes of people,
the opinions of persons having special means of knowledge thereon, are relevant facts

Cases—Where witnesses, members of a family, have special means of knowledge as to the usages of the family, their evidence will be relevant under this section so far as the existence of such usage is concerned. It is admissible evidence for a witness to give his opinion on the existence of a family custom, and to state as the grounds of that opinion information derived from deceased persons. But it must be the expression of independent opinion based on hearsay, and not mere repetition of hearsay 10 M L J. 267 P. C =23 A. 37. As regards proof of paternity of illegitimate child, *vide*, 27 M. 32. For test as to value of evidence admissible under ss 32, 49 and 60, *vide* A I R 1933 Sind. 213.

Opinion on relationship when relevant.

50 *When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:*

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act,* or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code †

Illustrations.

(*a*) The question is, whether A and B were married.
The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(*b*) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Scope—The scope of this section, leaving the exception out of consideration seems to be that the person himself is not to be called to state his own opinion; but that, when he is dead or cannot be called, his conduct may be proved by others. The section appears to afford an exceptional way of proving a relationship, but by no means to prevent any person from stating a fact of which he or she has special means of knowledge A husband or wife is not, therefore, precluded from proving his or her marriage 9 M 9=1 Weir 572 Under the proviso to this section, in proceedings of the kind therein specified, opinion relevant under this section is not by itself sufficient to prove marriage which must, in consequence be
lso 5 A. 233=A. W. N. 1883, 1.
adultery, bigamy and the like,
the regular way of the fact
as an illegitimate son must
question of relationship, and
can, of course, rely upon statements of deceased persons under s. 32, cl (5), upon
regards
All.
were
. 50.

A. I. R. 1933 All 130=1932 P. L J 208

Grounds of opinion when relevant.

51 *Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.*

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Object.—An important test of the value of the expert's evidence is thus provided. The Court is not left to the bare statement of an opinion but can inquire into the

* Act IV of 1869. † Act XL of 1860.

grounds on which it is based, and thus ascertain whether there are any grounds or or whether they are reasonably adequate.. This section is to a great extent a repetition of section 46 (*Cun, Ev* 204). See also 10 Bom. L. R. 97 ; 26 B. 1 (P. C.). Chemical examiner must give in his report opinion and grounds on which opinion is based. A. I. R. 1913 All. 394=34 Cr. L. J. 754=1933 Cr. C. 664.

CHARACTER WHEN RELEVANT.

In civil cases, character to prove conduct imputed irrelevant

52. In civil cases the fact that the character of any person concerned in such as to render probable and improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

Principle—"The general character is not in issue The business of the Court is to try the case, and not the man ; and a very bad man may have a very righteous cause." (*Thompson* v. *Church*, 1 Rost. 312 ; *Wig. Cas*, 29).

Criticism.—"The accepted general rule is that evidence of the general character of parties to civil actions, where character is not a part of the issue, is inadmissible. The rule seems to be one of practical convenience, for the purpose of avoiding the confusion of issue. On principle, however, it would seem that there ought to be exceptions to this general rule. In as much as the general rule is not based upon any philosophical reason, but is merely one of convenience, it ought not to be applied to cases where justice to the defendant requires that the inconvenience, arising from a confusion of the issues should be disregarded, and he be permitted [illegible] er words that such [illegible] a charhcter to bring it [illegible] cases. Civil actions [illegible] this character ; for such cases, are not infrequently mere speculative and black-maling schemes. The consequences to the defendant of a verdict against him in such a case are most serious, for the issue as to him involves his fortune, his honour and his family, From the very nature of the charge it often happens that an innocent man can only meet the issue by a denial of the charge and proof of his previous good character. Ought a defendant in such a case to be deprived of the right to lay before the jury evidence of his previous good character, because it will tend to confuse the issue, while a defendant in a cause where the state charges him with a simple assault, involving no more serious consequences than the payment, perhaps of a fine of fiv- dollars, is accorded the absolute right to give such evidence—*Per Start C. J.* in *Hein* v *Holdridge*, (1900) 81 N. W. 522 ; see also 6 W. R. Cr. 62 ; 7 W. R. Cr. 7 ; 59 Ind Cas 560 ; 1 C. W. N. 146 ; 26 Ind. Cas. 545 ; 13 Ind. Cas. 102 ; 16 C. W. N. 69.

Scope—The character of the parties to civil action is generally irrelevant and inadmissible. *Attorney General* v *Bowman*, 2 B. and P. 532.

In criminal cases previous good character relevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

Principle—The accused in a criminal case can always give evidence of his good character. *R.* v. *Rowton*, 34 L. J. M. C. 57. A man's character is often of the utmost importance in explaining his conduct and judging of his innocence or criminality. Many acts, which standing alone, would be suspicious, are freed from all suspicion when we come to know the circumstances and character of the person by whom they are done. (*Cunningham, Ev.* 205) No importance can be attached to evidence of good character when the case against the accused is clear.

Evidence of character.—Evid[illegible] who may show by general evidence [illegible] have committed the offence which [illegible] part of his character which is impea[illegible] dence of his conduct on particular occasions. The proper form of the question is, "From your knowledge of the prisoner does he bear a good character for honest[illegible] humanity, etc." as the case may be. (*Roscoe, Ev.* 25).

54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Previous bad character not relevant, except in reply.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

Legislative changes.—This section has been substituted by Act 3 of 1891.

Scope.—It is generally stated, that evidence of a prisoner's good character is nadmissible except in answer to e rule into two parts ? It seems ......r, good or bad, is always admissible at the prisoner's option whenever his good character is admitted his bad character is admissible. (*Cockle's Cas.* 112). "Evidence of character must, of course, be applicable to the particular nature of the charge; to prove for instance, that a party has borne a good character for humanity and kindness, can have no bearing in reference to a charge of dishonesty. The correct mode of inquiry is as to the general character of the accused" (*Will's Circumstantial Ev. p.* 226). Evidence of bad character should not be put before the jury. 15 W. R. Cr. 37; 7 W. R. Cr. 7; 8 W. R. Cr 11; 6 W. R Cr. 72; 2 B. H. Cr. 125; 5 C. B. R. 4; 15 P. R. 1888 Cr.; 5 Bom. L. R. 1034

Explanation 1—In all actions or proceedings in which a plaintiff's character, is actually in issue, as in actions for defamation, evidence of the plaintiff's character may be given. *Scott* v. *Sampson*, L. R. 8 Q B. D 91. In prosecution for rape, or assault to commit rape, or indecent assault evidence of the bad character of the prosecutrix may be given in defence, her character, under the circumstances, being considered to some extent, in issue. (*R.* v *Clarke* 2 Starkle 241; *Cockle's Cas.* 112). e accused is a fact in issue and as such evidence. See 11 C. W. N. 789. Upon to determine what punishment to award not only the nature and gravity of the offence committed, but also the character of the accused, the bad character character being admiss- eneral reputation and itation or disposition is this rule. Evidence of B. R.(1893-1900), 352.

Explanation 2.—It has been held that if prisoner's counsel elicited on cross-examination, from the witnesses for the prosecution that the prisoner has borne a good character, a previous conviction might be put in evidence against him, in like manner as if witness to his character had been called. *Per Parke B*, in *R.* v. *Gadbury*, 8 C. & P. 676; see also *R.* v. *Srimton*, 2 Den. C. C. R. 319=21 L. J. M. C. 37. Where a man is being tried upon a specific charge, unless within the four corners of the law, proof of a previous conviction is allowed for the purpose of proving guilty knowledge, or whatever it might be, no question ought to be permitted and no evidence allowed to show that he is a man of bad and dishonest character. But if the accused at his trial, choose to put in issue the question of his good character, it is then competent to rebut such evidence by giving evidence of general evil reputation. 14 A. 25. This section has no bearing whatever upon the question of the relevancy of a previous conviction after an accused has been convicted of the offence with which he has been charged, and for the purpose of enhancing the lely to the relevancy of a previous is guilty, and should be convicted . L. B. R. (1872-1892.), 449.

a discretion to admit previous conviction the trial, in all cases, in which there is such he prisoner was found guilty on the previous bears having committed the act charged, and in those is of a kind falling within any of the classe proved stated in ss. 6 to 16. 2 Weir. 760; see also 14 C. 721. But in other cases

the proof of previous convictions as evidence giving rise to an inference regarding the character of the prisoner is not admissible. 5 C. 758=6 C. L R. 219 ; L. B. R. (1893-1900), 93 ; 2 Pat L J. 706.

The proof of a previous conviction not contemplated by s. 75 Penal Code, may be adduced after the accused is found guilty, provided the previous conviction is relevant under the Act. 16 Bom L. R 934=26 Ind. Cas. 996.

Cases.—The fact that the accused had a bad character is not irrelevant under this section when the evidence relating to it is not given for the purpose of showing that the accused was a bad character and was therefore likely to commit offences of the kind of which he has been convicted. 2 Lah. L J. 653. Evidence of bad charac er is not admissible unless evidence of good character is given. Section 54 does not apply where bad character itself is fact in issue. A I. R. 1933 Oudh 355=10 O. W. N. 688=1933 Cr. C. 976. Evidence otherwise relevant but showing bad character is not inadmissible. 139 Ind Cas. 873=55 C. L. J. 439=A. I. R. 1932 Cal. 474 In proceedings under s. 110, Cr Pro Code, evidence of general repute by Crown is admissible. A. I R 1933 All 674.

Character as affecting damages.

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition ; but, [except as provided in section 54,] evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

Legislative changes.—The words within brackets have been substituted by Act 3 of 1891.

Scope—In all actions or proceedings in which a plaintiff's character is actually in issue, as in actions for defamation, evidence of the plaintiff's character may be given (*Scott* v *Sampson*, L R. 8 Q. B. D. 491). In a few cases, where the amount of damages depends upon character, as in seduction and breach of promise of marriage, evidence may be given of the character of the woman seduced, or the female plaintiff, but upon the question of damages only. *Very* v. *Watkins*, 7 C. and P 308. In general in actions unconnected with character, evidence as to the character of either of the parties to a suit is inadmissible being foreign to the point in issue, and only calculated to create prejudice. For the same reason, where particular acts of misconduct are imputed to a party, evidence of general character is excluded ; but it is otherwise where general character is put in issue ; (*Doed Faar* v *Hicks*, per *Buller J.*) ; for evidence of bad character is admitted in some actions with a view to the amount of damages. Thus, in actions of criminal conspiracy, the defendant could adduce evidence of the wife's bad character for chastity, and even of particular acts of adultery committed by her before her intercourse with him ; for by bringing the action the husband put her general behaviour in issue. So, in seduction, the defendant may show the previous bad character of the person seduced But even in such cases, it has been held that the plaintiff cannot [illegible] of the wife or daughter, until evidence has been [illegible] ch it. *Bamfield* v, *Massey*, 1 Camp. 460 ; and if [illegible] t go only to a specific instance, it has been ruled [illegible] give evidence, of general character, but must be restricted to disproof of the specific instance ; *Ibid* ; *Dodd* v. *Norris*, 3 Camp. 519 So, in an action for slander imputing dishonesty to the plaintiff, he cannot adduce evidence in the first instance of good character. *Stuart* v. *Lovell*, 2 Stark. 93 ; *Cornwall* v. *Richardson*, Ry. and M. 305 ; *Roscoe Ev.* 87. General and not particular evidence of character of complaint is admissible and relevant for awarding damages A. I. R 1932 Nag. 158=34 Cr. L J. 154.

[illegible] , explanation is based upon the dissenting [illegible] , 10 Cox Cr. 25 Therein he observed : "I [illegible] the principal matter to be inquired into and [illegible] , and admissible only as evidence of disposition The judgment of the particular witness is superior in quality and value to mere rumour. Numerous cases may be put in which a man may have no general character—in the sense of any reputation or rumour about him at all, and yet may

have a good disposition. For instance, he may be of a shy, retiring disposition, and known, only to a few, or again, he may be a person of the vilest character and disposition, and only his intimates may be able to testify that this is the case. One man may deserve that character [reputation] without having acquired it, while another man may have acquired without deserving it. In such cases the value of the judgment of a man's intimates upon his character becomes manifest. In ordinary life, when we want to know the character of a servant, we apply to his master. A servant may be known to none but members of his master's family; so the character of a child is only known to its parents and teachers, and the character of a man of business to those with whom he deals. According to the experience of mankind, one would ordinarily rely rather on the information and judgment of a man's intimates than on general report, and why not in a Court of law? But the English law is based upon the judgment of the majority according to which evidence of character must not be evidence of particular facts,
only, having reference to the nature of th
Indian Legislators more wisely accepted
is concerned but laid down that only general reputation and general disposition are admissible.

PART II.

On Proof.

CHAPTER III.

Facts which need not be proved.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Principle.—There are certain matters which are considered too notorious to require proof; such matters are therefore 'judicially noticed", that is to say, the Judge takes notice of their exist
thereof. English law is dealt w
notorious to the public generally
the "breast" of the Judge (*Cockl*
not be proved, *manifesta* (or *not*
back in the civil and the common
dure itself. We find it as a maxim
our law. It is qualified by another principle, also very old, and often over-topping the former in importance—*non report quid notum sit judici, si notum non sit in forma judici.* These two maxims seem to intimate the whole doctrine of judicial notice." *Thayer, Pre Treat, on Ev.* 277. When a case is presented at the bar
are presumed to be uninformed concerning the
is incumbent upon the litigant parties to esta-
on by them respectively. There is, however, a
be proved, since they are 'judicially noticed" by the Court and Jury. That is to say, there are a great many things of such common knowledge that the Courts ought to be presumed to know them—such as the Declaration of Independence; the earthquake and the great fire of San Francisco in 1906, and other matters of past history; the existence and procedure of their own Court; the public laws; the calendar, the public mortality tables; treaties entered into by their own government and many other matters of such general notoriety that every well-informed man or woman within the limits of the Court's jurisdiction must or should know. If it so happened that the proof of any such facts formed part of a litigant's case, he is excused from proving them, as it is said the Court will take judicial cognizance of their existence, or in other words they will be taken as proved. And the importance of the subject of judicial notice can hardly be over-
will fall
he very
(*Burr*
Jones, Ev. § 105).

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts:—

(1) all laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India :

(2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

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pur Indian Councils

ncludes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland ;

(2) the Parliament of Great Britain ;

(3) the Parliament of England ;

(4) the Parliament of Scotland ; and

(5) the Parliament of Ireland ;

(5) the accession and the sign manual of the sovereign for the time being of the United Kingdom of Great Britain and Ireland :

(6) all seals of which English Courts take judicial notice : the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council ; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India :

(7) the accession to office, names, titles, functions and signatures of the persons filing for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in *the Gazette of India*, or in the official Gazette of any Local Government :

(8) the existence, title and national flag of every State or sovereign re-

world, and pub-

(10) the territories under the dominion of the British Crown :

(11) the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons :

(12) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it :

(13) the rule of the road ‡[on land or at sea].

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

judicial notice of any fact, produces any such book or to do so.

judicial notice are so numer- them, or to say further than itical, historical, geographical, le range of matters, arising in of human affairs, which rest entirely upon acknowledged notoriety for their claims to judicial recognition." (*Burr. Jones* § 105). The matters enumerated in this section are by no means exhaustive. In this section certain matters are mentioned of which judicial notice should be taken.

* Inserted by X of 1927. † 24 & 25 Vict. c. 67.

‡These words in section 57, para. (13), were inserted by the Indian Evidence Act Amendment Act (18 of 1872), s. 5.

But the Court can take judicial notice of facts not mentioned in this section. (See also *Stephen's Dig.* Art, 58).

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he Privy Council, and, naturally,
he law thus noticed includes both
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d and Borough-English customs;
but generally local or particular customs must be proved (*Ibid 16*) A judge may refer to authorities to refresh his memory. So far as Indian law is concerned, the English rule should serve as a guide

Clause (2).—As has been mentioned in clause (1) the English Court takes judicial notice of all public Acts passed by the Parliament and since 1850 Private Acts also. It was customary, before 1850, to insert a clause in Private Acts
s should be deemed public and be judicially
, to dispense with the necessity, not only of
ucing an examined copy or a copy printed by
requiring neither to be specially pleaded nor
proved. By 13 and 14 Vict. c. 12, it was enacted: "That every Act made after the commencement of this Act shall be deemed and taken to be public Act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act." This provision is now repealed by the Interpretation Act, 1889, 52 and 53 Vict. c 63, which provides by s. 8, that every Act passed after 1850 "shall be a Public Act and shall be judicially noticed, as such unless the contrary is expressly provided by the Act." So now every personal Act or local Act should be taken notice of by the Indian Courts.

Clause (3).—*Vide* the Indian Army Act (VIII of 1911).

Clause (4).—The English Courts will judicially notice the Law of England and Ireland, including the Law and Custom of Parliament, and the privileges and course of proceedings of each House of Parliament. *Stockdale* v *Hansard*, 9 A. and E. 1=2 P. and D 1. The Court should take judicial notice of debates of Parliament. 14 C. W. N 73=37 C 760.

Clause (5).—The English Courts take judicial notice of the great privy seal (*Lord Melville's Case*, 19 How. St. Tr 707; of royal proclamation; of the signature of the clerk of the Parliaments. (*Badische* v. *Levinstein*, 4 R. P. C 470); seal of Corporation of London (*Doe* v. *Mason*, Esp 53); seal of the Apothecaries Company (14 and 15 Vict c 99 s. 81); the seal of the Board of Trade; seals of district registeries. (Judicature Act, 1873, s. 61); seals and signatures of Commissioners for Oaths (*Exparte Magee*) 15 Q. B D. 332); the seal of a notary public in any part of His Majesty's dominions, but not of a foreign notary public. *In re Davis*, (1910) W. N. 212; seals of country Courts, etc.

Clause (6) and (7)—10 C. L. R. 469.

Clause (7)—5 Ind. Cas. 537.

Clause (8)—4 O. C. 182; 51 P. R. 1886.

be produced from photograph is not within common knowledge. A I. R. 1931 P. C. 189 (P. C.)=131 Ind Cas 771.

General for Uganda is
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of Uganda. 22 B. 54; see also 46 Ind. Cas. 119; 22 C. W. N. 745=28 C. L. J. 32.

Case.—13 Ind. Cas. 599

Facts admitted need not be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings :

Provided that the Court may, in its discretion require the facts admitted to be proved otherwise than by such admissions.

Scope.—Any matters which have been admitted for the purpose of the trial need not be proved. Ac
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pleadings (*b*) on notice to admit facts or documents, served by one party on another ; (*c*) in answer to interrogatories administered by one party to another (*d*) by solicitor or Counsel, in the exercise of his discretion, at or before trial. *Cockle's Cas.* 37. It should, however be noted here that express admissions are only allowed in criminal cases, unless a plea of "guilty" can be treated as such. (*Ibid.* 37). But see Rat Un Cr C 769 Under this section no fact need be proved which the parties agree to admit at the hearing or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings U B. R. (1897-1901). Vol II 379 When an agreement sued upon is admitted by the defendant, proof of it is dispensed with. 11 Ind. Cas. 810 Where a document is by reference included in the plaint or written statement, and its terms and execution admitted on the record by the pleadings it is not necessary to prove it or put it in evidence and its non-registration is immaterial U B. R 1904, 3rd Qr. Evidence. See also 9 Ind Cas 470, 12 Bom L. R 712 ; 11 Ind Cas. 150 ; U. B. R. 1907, Ev. 1, 9 Ind. Cas. 907 ; A I. R 1934 Lah 898

An accused person is bound by an unqualified admission made at the trial by his solicitor. In England, a formal admission by the counsel at a trial has been allowed in order to dispense with mere formal proofs In India there is nothing to prevent a prisoner, on being questioned, under s. 342, to make an admission, and it is obvious that some admissions on formal matters of law can be better trusted to his legal adviser and there seems to be no reason in principle why, when the admission has been so made in his presence at the trial so as to dispense with the attendance of witnesses for the prosecution, it should not be held to bind him. Rat. Un. Cr. C. 769 When an agreement sued upon is admitted by the defendant, proof of it is dispensed with. A Court cannot dismiss a suit based on the admitted document on the ground that the document was not sufficiently stamped. 11 Ind. Cas. 810. Where pro-note is admissible but admitted by defendant, inadmissibility is immaterial A I. R. 1932 Mad. 693=63 M L. J 303=1932 M W N 793=36 M. L W. 470, A I R 1933 Mad. 117. Where agreement of discharge or satisfaction is admitted in pleadings, proof is dispensed with. A I R 1931 Cal 667=58 C 532. Act of parties cures want of registration of *solenama*. A. I. R. 1931 Cal 667=58 C. 532.

Cases.—2 Lah L. J 253, 20 M. L. T. 44, 42 B. 352 ; 1918 M. W. N. 853.

CHAPTER IV.

OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Scope.—All facts except the contents of a document may be proved by oral evidence. The sworn testimony of a witness should not be ignored and disbelieved unless discredited or broken down by contrary proof, or by matter elicited in cross-examination, which may tend to show that the persons giving such evidence have deliberately perjured themselves, or have made a false and concocted statement, or unless the evidence is upon the face of it so absurd or improbable that no person ought to believe it A W N. 1887 189; 26 A 108 (P. C)=31 I. A. 38 It is not correct to hold that, for the determintion of the merits of a case, oral testimony unsupported by documentary evidence is of no value. 18 W. R. 328. The evidence of one witness, if reliable, is not insufficient to prove a fact. 11 W. R. 94.

But the Court can take judicial notice of facts not mentioned in this section. (See also *Stephen's Dig.* Art, 58).

Clause (1)—The English Courts take judicial notice of the Laws of England and Ireland nor that of the Channel Islands, nor of Scotland, except in the House of

the Privy Council, and, naturally,
The law thus noticed includes both
ustoms and some local customs of
kind and Borough-English customs;
but generally local or particular customs must be proved (*Ibid 16*) A judge may refer to authorities to refresh his memory. So far as Indian law is concerned, the English rule should serve as a guide

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judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act." This provision is now repealed by the Interpretation Act, 1889, 52 and 53 Vict. c 63, which provides by s. 8, that every Act passed after 1850 "shall be a Public Act and shall be judicially noticed, as such unless the contrary is expressly provided by the Act." So now every personal Act or local Act should be taken notice of by the Indian Courts.

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(14 and 15 Vict. c 99 s. 81) ; th regis-
teries. (Judicature Act, 1873, s. Oaths
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Clause (7)—5 Ind. Cas. 537.

Clause (8)—4 O. C. 182 ; 51 P. R. 1886.

Clause (9)—The Court can take judicial notice of public holidays. 59 Ind Cas. 926; 16 N. L. R. 198 ; A I R. 1933 Lah. 558

be produced from photograph is not within common knowledge. A I. R. 1931 P. C. 189 (P. C.)=131 Ind Cas 771.

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Case.—13 Ind. Cas. 559

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings :

Facts admitted need not be proved

Provided that the Court may, in its discretion require the facts admitted to be proved otherwise than by such admissions.

Scope.—Any matters which have been admitted for the purpose of the trial need not be proved Admissions thus expressly made in the proceedings prior to or at the trial are sometimes called formal or express admissions, to distinguish them from those informal or casual statements made by a party against his interest which may, at the trial, be proved by witnesses Formal or express admission may be made (*a*) on pleadings (*b*) on notice to admit facts or documents, served by one party on another ; (*c*) in answer to interrogatories administered by one party to another (*d*) by solicitor or Counsel, in the exercise of his discretion, at or before trial. *Cockle's Cas.* 37. *It should, however be noted here that express admissions are only allowed in* criminal cases, unless a plea of "guilty' can be treated as such. (*Ibid.* 37). But see Rat Un. Cr. C 769 Under this section no fact need be proved which the parties agree to admit at the hearing or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings. U. B. R. (1897-1901). Vol. II 379 When an agreement sued upon is admitted by the defendant, *proof of it is dispensed with.* 11 Ind. Cas 810. Where a document is by *reference* included in the plaint or written statement, and its terms and execution admitted on the record by the pleadings it is not necessary to prove it or put it in evidence and its non-registration is immaterial U B. R 1904, 3rd Qr. Evidence. See also 9 Ind. Cas. 470 ; 12 Bom. L. R. 712 ; 11 Ind. Cas. 150 ; U. B. R. 1907, Ev. 1. 9 Ind. Cas. 907 ; A. I. R. 1934 Lah 898

An accused person is bound by an unqualified admission made at the trial by his solicitor. In England, a formal admission by the counsel at a trial has been allowed in order to dispense with mere formal proofs. In India there is nothing to prevent a prisoner, on being questioned, under s. 342, to make an admission, and it is obvious that some admissions on formal matters of law can be better trusted to his legal adviser and there seems to be no reason in principle why, when the admission has been so made in his presence at the trial so as to dispense with the attendance of witnesses for the prosecution, it should not be held to bind him. Rat Un. Cr. C. 769 When an agreement sued upon is admitted by the defendant, proof of it is dispensed with. A Court cannot dismiss a suit based on the admitted document on the ground that the document was not sufficiently stamped. 11 Ind. Cas. 810. Where pro-note is admissible but admitted by defendant, inadmissibility is immaterial A I. R 1932 Mad 693=63 M L. J 303=1932 M. W. N. 793=36 M. L. W. 470, A I R 1933 Mad. 117 *Where agreement of discharge or satisfaction is* admitted in pleadings, proof is dispensed with. A I R 1931 Cal 667=58 C. 532. Act of parties cures want of registration of *solenama.* A. I. R. 1931 Cal 667=58 C. 532.

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CHAPTER IV.

OF ORAL EVIDENCE

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Scope.—All facts except the contents of a document may be proved by *oral evidence* The sworn testimony of a witness should not be ignored and disbelieved unless discredited or broken down by contrary proof, or by matter elicited in cross-examination, which may tend to show that the persons giving such evidence have deliberately perjured themselves, or have made a false and concocted statement, or unless the evidence is upon the face of it so absurd or improbable that no person ought to believe it A W. N. 1887. 189, 26 A 108 (P. C)=31 I. A. 38. *It is not correct to hold that, for the determination of the merits of a case, oral testimony unsupported by documentary evidence is of no value.* 18 W. R. 328 The evidence of *one* witness, if reliable, is not insufficient to prove a fact. 11 W. R. 94.

Discrepancies in evidence must be carefully considered and their effect allowed for, but when they can be fairly reconciled by explanation or can be naturally and reasonably accounted for evidence, otherwise trustworthy, cannot be put aside, although its value may be *pro tanto* impaired, solely because of their concurrence. U. B. R. (1897-1901) vol. i 162.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also, that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

Scope.—Direct evidence, as opposed to hearsay evidence is generally required. The *evidence must be given by witness who perceived directly by one of his senses* the fact to which he deposes Hearsay evidence that is the evidence of a witness as to a fact which he did not himself perceived,
any other person, is not admissible, except in a fe
den, 5 L. J. *Ev.* 218; *Cockle's Cas.* 149); see also 12 B L. R. App. [illegible]
363; 1924 Lah 733.

Principle.—The grounds commonly assigned for the rejection of hearsay evidence are—(1) the irresponsibility of the original declarant; (2) the depreciation of truth in the process of repetition; (3) the opportunities for fraud its *admission* would open. to which may be added the tendency of such evidence to protract legal inquiries and to encourage the substitution of weaker or stronger proofs. *Phipson, Ev* 189. In the *Berkeley Peerage Case*, 4 Camp. 415. *Sir James Mansfield*
[illegible] d by any person can
[illegible] livered upon oath in
[illegible] die before the trial,
[illegible] l in the suit; but
[illegible] *to* what they heard
[illegible] of the declarations,
the evidence would not be received."

It was not intended by this section to exclude the circumstantial evidence of things which can be seen, heard or felt. 12 B. L. R. App. 18. Witness proving statement by other person must repeat what that person actually said. A. I. R. 1932 Lah. 7=32 Cr. L. J 1172. Statement by a person who is not produced as a witness in a criminal trial to another person is hearsay evidence and is not admissible. 33 P. L. R. 208=33 Cr. L. J. 637; see also A. I. R. 1933 Sind 213

Where information was given to the Police that the first three accused *were* collecting in the house of the fourth accused with intent to commit dacoity, and the person who gave the information was not produced before the Court, *held* the judge had wrongly admitted the hearsay evidence of the Police officers as to the intention

of the accused to commit dacoity, although the Judge was not wrong in allowing the officers to name the person who told them that they would find the first three accused in the house of the fourth. 2 Weir 702.

Cases.—22 C. W. N. 75 ; 38 M. 466 4 Ind. Cas. 579.

CHAPTER V.

Of Documentary Evidence.

Proof of contents of documents

61. The contents of documents may be proved either by primary or by secondary evidence.

Scope —*There are two methods of proving a document either by primary or by* secondary . admissible . . . objection, ... appellate Court. 31 C. 155.

Primary evidence.

62. *Primary evidence means the document itself produced for the inspection of the Court.*

Explanation 1 —Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2 —Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest ; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed *at one time from one original. Any one of the placards is primary evidence of the* contents of any other, but no one of them is primary evidence of the contents of the original

Explanation I —Where a mortgage deed has been executed in duplicate, each part would be primary evidence of the document under this section. U. B. R. (1892-1896) vol. II, 234. "Duplicate originals" or copies executed by all parties are primary evidence against all such parties. Counterparts or copies executed by certain parties only, are primary evidence against such parties only. (*Cockle Cas.* 308).

Secondary evidence.

63. Secondary evidence means and includes—

(1) certified copies given under the provisions hereinafter contained ;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies ;

(3) *copies made from or compared with the original ;*

(4) counterparts of documents as against the parties who did not execute them ;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence ; but the copy not so compared is not secondary evidence

of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine copy of the original, is secondary evidence of the original.

Scope—This section is exhaustive of the kinds of secondary evidence admissible under the Act. 43 M. L. J. 37; see also 10 Ind. Cas 852. Statement of witness abstracted in judgment given in previous suit cannot be used in lieu of original statement. 33 M. L. W. 20=60 M. L. J. 13=53 M. 952=1930 M. W. N. 601=A. I. R. 1933 Mad, 207. Register containing copies made directly from originals is legally admissible. A. I. R. 1931 Oudh 146=6 Luck. 619.

Clause (1)—Certified copies mean copies signed and certified as correct by official having custody of originals. They are allowed as evidence by various statutes. (*Cockle Cas. 323.*)

Clause (2).—*Vide* Illustrations (*b*) and (*c*).

Clause (3).—This clause includes copies proved by oral evidence to have been examined with and to correspond with the originals. The witness may either have examined the copy which another person, not called as a witness read from the original. All public documents may be proved in the manner, but certified or office copies are generally used when available (*Cockle Cas. 323*). See also 1924 Nag. 375; 20 L. W. 719.

Clause (4).—"Counterparts" or copies executed by certain parties only, are primary evidence against such parties only. *Cockle Cas. 308.*

Clause (5).—66 Ind Cas 557; 36 Ind. Cas 696. "Seen" includes also "read over". 73 Ind. Cas. 654; see also 71 Ind. Cas. 654, 80 Ind. Cas 939=(1924) All 792.

Illustration (c).—A copy of a copy is inadmissible in evidence. 54 Ind. Cas. 941=1 P. L. T. 47; 7 A. 738.

Cases.—No secondary evidence can be given of a document, which is not proved to have been written by the accused or to have ever existed. 8 A. L. J. 302=12 Cr. L. J. 259=10 Ind. Cas. 852. It is not open to the appellate Court to consider whether the provisions as to secondary evidence have been complied with. 3 Pat. L. T. 397. A statement made by a party or his authorized agent in a previous suit, in which he refers to a document which is against his interest, is secondary evidence of that document. 53 Ind. Cas. 667; see also, 25 M. L. T. 19. A translation of a *Purwana* or grant is not secondary evidence of that grant and so it is not admissible in evidence. 35 Ind Cas 201=4 L. W. 331.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Scope.—Secondary evidence is not admissible where less of primary evidence is not proved. As regards documents the best evidence in the possession or power of the party tendering it must be given. Generally, the best evidence of a document is the original document, which is, "primary evidence" of its contents. Such original must be produced unless its absence is accounted for. *Macdonnel* v. *Evans*, 21 L. J. C. P. 141. The original document must be produced whenever there is a question as to its contents or terms, unless for special reasons secondary evidence is allowed. *R.* v. *Elworthy*, L. R. 1 C. C. R. 103=37 L. J. M. C. 3; *R.* v. *Hunt*, 3; B. and Ald. 566. But when the loss of the original has not been proved and inspite of that the Court of first instance admitted a copy of the sale certificate, without any objection from the other party, no objection can be taken in the appellate Court. 3 L. B. R. 40.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

(*a*) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,
and when, after the notice mentioned in section 66,
such person does not produce it ;

(*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest ;

ost, or when the party
rason not arising from

(*d*) when the original is of such a nature as not to be easily movable ;

(*e*) when the original is a public document within the meaning of section 74 ,

(*f*) when the original is a document of which a certified copy is permitted by this act, or by any other law in force in British India, to be given in evidence ;

(*g*) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*) and (*d*) any secondary evidence of the contents of the document is admissible.

ocument, but no other kind of

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Scope—Ss. 65 and 66 must be complied with before admitting secondary evidence. A I. R 1933 All. 690=34 Cr L. J. 967=1933 A. L. J. 799 ; see also A. I. R 1933 Pat 468 Discretion as to admitting secondary evidence is with trial Court. A I R. 1931 Bom. 105=55 B 103=32 Bom. L. R. 1385. Where document was tendered in evidence and exhibited but not found on record, party can produce copy or secondary evidence or contents. A. I. R. 1933 Lah. 782. Party not producing document in his possession should not be allowed to prove contents by secondary evidence. A. I. R. 1933 Mad. 364. Where original document was lost while in custody of Court, no formal proof of loss need be given. A. I. R. 1931 Pat. 114=121 In
was admitt
evidence.
to set aside
of *baki* of
lead secondary evidence as to existence of previous debt. 146. Ind. Cas. 350= A. I. R 1933 Lah. 945.

Clause (a)—Secondary evidence of a document is admissible when the original is in possession of an adverse or opposite party, who refuses to produce it after a proper notice to produce. The object of a notice to produce is merely to give the other party sufficient opportunity to produce the document if he pleases, and not that he may have time to consider the terms of the document, and to prepare evidence or argument in support of or against it. Therefore, where the document is in Court at the time of the trial, a notice to produce it immediately is sufficient to render secondary evidence of its contents admissible if it be not produced. 21 L. J. Ex. 925 ; *Cockle Cas.* 314. Secondary evidence of a document is also admissible when the original is in the hands of a stranger, or third person, who is, on the ground of privilege, not compellable by law to produce it, and who refuses to do so, either when summoned as a witness with a "*subpoena duces tecum*" or when sworn as a witness without a *subpoena* if he admits that he has the document in Court. *Mills* v. *Oddy*, 6 C. and P. 728 ; *Cockle Cas.* 316. But where he can be compelled to produce the document, secondary evidence is not competent. *R.* v. *Inhabitants of Leanfathely*, 23 L. J M. C. 33 ; *Cockle Cas.* 317. The law requires that a party shall do all that he can legally do to compel production of a document by a stranger before he puts in secondary evidence against an opponent. *Cockle Cas.* 318 ; see also 12 Ind. Cas. 861 ; 31 Ind. Cas. 892.

Cases—L. R. 3 A. 8 ; 1922 (Bom). 177 ; 3 Lah. 282 ; 67 I. C. 237 ; 4 Lah. L. J. 418 ; 66 Ind. Cas 360 , 24 O. C. 272 , 62 Ind. Cas 60 ; 62 Ind. Cas. 444 ; 23 Bom L. R. 505 ; 49 Ind. Cas. 507 , 41 A, 592 ; 35 Ind. Cas. 328 , 34 Ind. Cas. 153 ; 23 C. L. J. 112 , 12 Ind. Cas. 861 , L. R. 4 A. 231 , 71 Ind. Cas. 825 ; 1923 Rang. 112 ; L. R. 4. A. 152 , 78 Ind. Cas. 568 , 6 C. 753 , 26 C. 53 ; A. I. R. 1934 All. 529.

Clause (c)—Secondary evidence of the contents of a document is admissible (1897=1901) vol. 11. 382. But it must be de for it What is proper search depends More careful search will be required for a valuable than for a useless document. (*Brewster* v. *Swell*, 3 B. & Ald 296 ; *Cockle Cas* 318). Such evidence is not admissible by mere assertion of loss L. R. 3 A. 539 ; see also 67 Ind Cas 565 , 4 Lah. 416 , 49 Ind Cas. 1006 ; 32 Ind. Cas 399 , 45 Ind Cas 888. Wher document of title was not produced by party possessing it after notice, party giving notice is entitled to give secondary evidence of document. A. I. R. 1931 Bom 33=32 Bom L. R 1435.

Clause (d)—Secondary evidence of a document is admissible where the original cannot be brought to Court because it is physically impossible to bring the original, as in the case of writings on walls tombstone and the like. *Mortimer* v. *M'callan*, 4 Jur. 172 ; *Cockle Cas.* 321.

Clause (e)—Secondary evidence of a document is admissible where the original cannot be brought to Court, because the law does not allow or require, the original to be brought to Court, on
registers and other "Public
Mortimer v *M'callan*, 4
existence no secondary evi
1878 ; see also 17 C. P. L. R 161 ; 2 Bom. L. R. 553 ; 10 C. P. L. R. 59 ; 34 C. 293 ; 22 C. W. N. 742.

Clause (f).—A registration office copy of sale deed is admissible. 11 Ind. Cas. 50 ; 36 Ind. Cas 673.

Clause (g)—*Vide* 2 Lah. L. J 714 ; 6 M. 80 ; 5 C. 568.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, [or to his attorney or pleader,] such notice to produce it as is prescribed by law ; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Rules as to notice to produce.

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

(1) when the document to be proved is itself a notice ;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it ;

(3) when it appears or is proved that the adverse party has obtained

document ;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Legislative changes—The words within brackets have been inserted by Act 18 of 1872.

Scope.—Secondary evidence of a document is admissible when the original is , who refuses to produce it after proper

to be taken in the Appellate Court a

which was admitted in evidence in the first Court without any objection. 34 Ind. Cas. 539=216 P. W. R. 1912.

Proof of signature and handwritng of person allege l to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Scope—To prove the execution of a bill of sale executed in their favour by the plaintiff's father, the defendant called a *Kazi*, who deposed that the vendor came before him accompanied by witnesses, and acknowledged the execution of the deed, which was then registered. The lower appellate Court found it was sufficiently proved. On special appeal to the High Court it was contended that the execution was not sufficiently proved under this section *Held*, that the proof of execution was sufficient : direct evidence of the handwriting of the executant was not necessary under s 67. 12 B L R. App. 16 This section does not require the subscribing witness to a document to be necessarily produced 21 W. R. 429. Although under s. 67, no particular kind of poof is required for the purpose of establishing the fact of execution it must nevertheless be shown to the satisfaction of the Court that the mark or signature denoting execution was actually fixed to the document by the person who professed to execute it A Court is not bound to treat registration or endorsement as conslusive proof of the fact of execution. 46 Ind. Cas 279=5 O. L.

L. J. 712=57 M 662 "Thumb marks" should be also proved in accordance with th provision of this section. A I R 1934 Mad 558=40 L W. 277.

Proof of execution of document required by law to be attested.

68. If a document is required by law to be attested, it shall not be use as evidence until one attesting witness at leas has been called for the purpose of proving it execution, if there be an attesting witness alive and subject to the process of the Court and cap able of giving evidence.

"Provided that it shall not be necessary to call an attesting witness in proo of the execution of any d cument, not being a Will, which has been registere in accodance with the provisions of the Indian Registration Act, 1908 unles its execution by the person by whom it purports to have been executed i specifically denied."*

Scope—When a document is required by the law to be attested, one of th attesting witnesses must be called in order to prove it, if he be alive and capable o giving evidence. *Abbot* v *Plumbe*, 1 Dougals 216 : (*Cockle Cas.* 331). A scribe is no an attesting witness. 35 A. 254 ; 20 C. W N. 699 ; 5 N. L. R. 3 , *contra* 41 M. 535 Where only an attestor proved a mortgage-bond attested by more than two witnesse and where its due execution was not denied, *held* that having regard to s 68, th document may be taken as properly proved 29 C. 355=6 C W. N. 395. Sale-dee and surety bond do not require to be proved by attesting witnesses. 30 Ind. Cas. 64 26 C 222=3 C. W N. 228 An unattested mortgage document cannot be prove

213=58 Ind. Cas. 80 Mere proof of the genuineness of the signature of the executant of a document does not dispense with the proof of its proper attestation if the document is one required by law to be attested before it can effectuate a transfer.

* This proviso has been added by Act 31 of 1926.

Ind. Cas 501. Scribe witnessing execution and appending his signature is attesting wit-
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called it is no excuse that he may turn hostile. A I. R 1932 Mad. 148; see also A I. R 1932 All. 320=1932 P. L. J. 207, A. I. R. 1932 All. 527 (F. B.).

Proviso ... on be not be called party. All Under called but proof of attestation *aliunde* is not 11 Rang 26=A. I. R. 1933 Rang. 6; see also 1109 In case of admission by executant as to ...ss need not be called. 1933 M. W. N. 141= A I. R. 1933 Mad 432. *Quaire.* Whether s 68 as amended by Act 31 of 1926 is not retrospective so far as the operation of admitting evidence is concerned. A I. R 1933 Mad 612=144 Ind. Cas. 89; but see 1931 P. L. J. 392=A. I. R. 1931 All. 411. Where validity of deed is admitted proof of attestation is not necessary. A. I. R. 1934 All. 507, see also A. I R 1935 Lah. 703

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his hand-writing, and that the signature of the person executing the document is in the hand-writing, of that person.

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Notes.—The plaintiffs sued the heirs of a mortgagor on a mortgage deed, execution of which was denied. In order to prove the deed, witnesses were examined who were acquainted with the handwriting of two of the attesting witnesses, who were admittedly dead. There was no evidence on record to show that the other attesting witnesses were not alive or were not subject to the process of the Court. There was only a statement by the plaintiff's pleader to the effect that he had been unable to ascertain their whereabouts. *Held,* that under the provisions of the Evidence Act, evidence could not be admitted to prove the signature of the attesting witnesses until the absence of all the attesting witnesses had been duly accounted for. 11 Ind Cas. 225; see also 34 A. 615; 10 A. L. J. 217; 35 A. 364; 27 Ind. Cas 866. When the Court of first instance comes to a finding as proved" within the meaning of this section, it the appellate Court, especially when no objecti the document at the time of the hearing. 32 In gether were intended to lay down how a docume attested, could be proved, and the intention was, that if the provisions of the sections as to proof were complied with the document, in the absence of any evidence to the contrary must be considered proved, and that it was not the intention of the legislature that an attesting witness or some other witness should have to prove further that the document was in fact signed by the mortgagor in the presence of at least two attesting witnesses. 39 A. 109=41 Ind. Cas 171. An illiterate witness may be an attesting witness. 22 A. L. J. 1114

Admission of execution by party to attested document.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Scope.—Now this section is to be read subject to the proviso to section 68 *supra.* According to English law a document which requires attestation must be proved by one of the attesting witnesses and this is so even if the person by whom the document was executed has admitted its execution by himself. But this section deviates from that view and lays down that where its execution is admitted by the party an attesting witness need not be called. The term "admission" relates only to the admission of party in the course of the trial of a suit, and not to the

attestation of a document by the admission of the party executing it. 27 C. 190 ; 7 N. L. R. 85 ; 7 C. W. N. 384. Non-admission of execution is effectual under this section unless it amounts to an acknowledgment of the formal validity of the instrument. 36 C. L. J 373. The word "execution" in this section means that the party by affixing his signature or mark has signified his assent to the contents of the document, and if a party admits that he has done this, he admits execution. 24 Bom. L. R. 1296. This section was intended to dispense with the necessity of calling attesting witnesses and with formally proving execution in a case where the party admitted it. 19 A. L. J. 855. Where there are two executants to a mortgage-deed attestation may be according to law in respect of one of them but not in respect of the other. 47 Ind. Cas. 9 The admission referred to in this section is an admission made in the course of the proceeding in which the attested document is produced. 13 N L R. 197 ; see 47 B. 137 ; 38 C L J 114 ; 1 Rang. 557 ; 74 Ind. Cas. 969 ; 74 Ind Cas. 839 ; 27 C. 19 ; 38 A. 1=13 A L. J. 881=30 Ind. Cas. 376 ; 47 Ind. Cas. 9 ; 11 Ind Cas 689=7 N. L R 85.

Proof when attesting witness denies the execution

71. If the attesting witness denies or does not recollect the execution of the document, its, execution may be proved by other evidence.

Scope.—This section is also to be read subject to the proviso of section 68. Where in a mortagage suit it was found that one of the attestors was dead and the other either denied or did not recollect the execution of the document, the execution of the same can be proved by other evidence. 1 Pat. 154 The mere fact that the attesting witnesses repudiate their signatures or make statement suggesting that they attested at the instance of persons other than the executants or in their absence does not invalidate the document, if it can be proved by evidence of a reliable

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Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may bo proved as if it was unattested.

Cases—A suit was brought for sale of the mortgaged property. It was found that the mortgage was not executed in accordance with law and the suit was dismissed. In appeal the plaintiff gave up his right under the mortgage and asked for

Comparison of signature, writing or seal with others admitted or proved.

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person, may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved, for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

[This section applies also, with any necessary modifications, to finger-impressions.]

Legislative chanses.—The last para was added by Act 5 of 1899.

Scope—Under this section it is not necessary that the writing which is dispute must itself be in terms express or indicate that it was written by

person to whom the writing is attributed. The word "purports" in the section means "alleged". 14 Bom. L. R. 310=15 Ind. Cas. 649. See Un. Cr. C. 491; see also 48 Ind. Cas. 68=35 M. L. J. 698. Court has power to ask accused to write or give his thumb impression. 56 B. 304=34 Bom. L. R. 598=33 Cr. L. J. 666=A. I. R. 1932 Bom. 406. Handwriting may be proved under ss. 73, 47 and 45. A. I R. 1932 Bom. 588=34 Bom. L. R. 1371. Comparison of signatures is one of the modes of proving handwriting. Although where there is no other evidence such proof would be regarded hazardous and inconclusive, it cannot be regarded as an error in law to base the conclusion on such proof alone, and a Court of Second Appeal would have no power to set aside a finding based on such comparison. 11 M L. T. 424=14 Ind. Cas. 741; See also 10 C. 1042; 37 C. 467, 16 A. 151 (P. C); 62 Ind. Cas. 882.

Finger-impression—A Court has power to direct an accused person to make a finger-impression and the same is admissible in evidence. So also is the evidence of an expert concerning finger-impression. 2 Bur L. J. 270; 1 Rang. 759 (F. B). 1924 Rang. 115; 17 Cr. L. J. 616=35 Ind. Cas. 492.

Public Documents.

Public documents.

74. (1) The following documents are public documents:—

(1) documents forming the acts or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country;

(2) Public records kept in British India of private documents.

Cases—Census Registers are not public documents within the meaning of this section. 6 Bom. L. R 535. All the papers filed in a suit, in which a compromise is effected by a decision form part of the record. Such a record is a public document. 25 W. R. 68. Letters between district authorities are pubic documents as they form records of public authorities Hence they are admissible in evidence under s. 74, 23 W. R. 272. Documents purporting to be abstracts from, or copies of Government measurements, *chittas*, produced from, the Collectorate, there being nothing to show that they were the records of measurements by any Government officer, are not public documents 7 C 76 Municipal proceedings are also [illegible]

[illegible]

P L J. 405=A. I. R. 1931 All. 364. Deposition of witnesses must be proved properly unless they are certified copies. A. I. R. 1933 Rang. 212. Letter forwording proceedings of public meeting is not public document. 143 Ind. Cas 367= A I. R. 1933 Cal. 312=55 C L. J. 558. Sub-section (2) does not apply to documents not registred but executed and authenticated before sub-registrar under the registration Act, 1908. A. I. R 1931 All 649 Government School masters are executive officers. 12 My. L. J. 133. Copy of general power of Attorney cannot be given to a person who is not a party to the deed 1931 A. L. J. 666.

Private documents.

75. All other documents are private.

Private documents.—The list of public documents has been given in s 74. That list is complete. All other documents besides those mentioned in s. 74. are private documents.

Certified copies of public documents.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificates shall be dated and subscribed

by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation—Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Notes —A right to inspect public documents is, however, assumed in this section of the Evidence Act. 20 M. 189 Ss 76 and 77 refer to public documents and are not applicable to *kobalas* 22 W. R. 355. The contents of the *jama bandi* can be proved by the production of certified copies furnished as provided by ss 76 and 77 of the Act L R. 3A. 386 (Rev.) *Fard Bachh* prepared under Punjab Land Revenue Act can be proved by certified copies A. I. R. 1931 Lah. 605=32 P. L. R. 508. Documents privileged on ground of state policy are excluded from right to inspection. A. I. R. 1932 Bom. 291=34 Bom. L R. 236=56 B. 324. Judgments affecting rights and more particularly liberties of people must be accessible to public. A I. R. 1931 All. 364=53 A. 724=32 Cr. L J. 864=1931 P. L J. 405.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

ing certified copies of the Court passed upon a com- of the compromise under record of an act of a public ;5, 14 C 486 (P. C), 10 C. L. should be either by producing f car is by producing register. A. I. R. 1933 Cal. 178=36 C. W N. 1147, see also A I. R. 1934 Lah. 698=35 P. L. R. 405.

Proof of other official documents

78. The following public documents may be proved as follows :—

(1) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government :

(2) The proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3) proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in *the London Gazette*, or purporting to be printed by the Queen's Printer :

(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country,—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council :

i India,—
keeper thereof, or by a
ity of such body :

(6) Public documents of any other class in a foreign country,—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic

agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Scope.—Besides certified copies there are special ways of proving certain public documents which are pointed out in this section (*Cunningham, Ev.* 270). Newspaper extract is not admissible. 129 Ind. Cas. 443=1930 A. L. J. 1535=A. I. R. 1931 All 12.

Clause (5)—30 Ind. Cas. 643=16 Cr. L. J. 659 : 17 C. W. N. 531=18 Ind. Cas. 651.

Clause (6).—15 C. W. N. 1053=14 C. L. J. 375.

Presumptions as to Documents.

Presumption as to genuineness of certified copies.

79. The Court shall presume every document purporting to be a certificate, certified copy of other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine :

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Scope.—The registering officer's evidence is not necessary to prove the certificate of registration the genuineness of which is to be presumed under this section. 71 Ind. Cas. 805.

Presumption as to documents produced as records of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or

ment or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine ; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Scope.—The statement as to which this section says that certain presumptions shall be drawn are statements or confessions taken in accordance with the law. The section does not render admissible any particular kind of evidence, but only dispenses with the necessity for formal proof in the case of certain documents taken in accordance with law. Section 80 does not operate to render it admissible. The section merely gives legal sanction to the maxim "*Omnia preasumuntur rite esse acta*" with regard to documents taken in the course of a judicial proceeding. 9 M. 224=2 Weir. 125. But it must purport to be signed by a Judge or Magistrate and where the person taking the deposition on it to claim the position of a Judge or

The defect may be supplied

accused person recorded by a

10 C. P. L. R. Cr. 16. The

ice of the accused is not obli-

29 The section has no bea-

made by the deceased as a dying declaration. 9 P. R. 1900 Cr. See also 11 B. H. C. R. 247. Depositions can be proved only under S. 80 and only when taken according to law. 142 Ind. Cas. 653=34 Cr. L. J. 430=A. I. R. 1933 Cal 190. The same rule is applicable in case of confession and dying declaration taken by a Magistrate. A. I. R. 1934 All. 340 ; A. I. R. 1934 Cal. 636=35 Cr. L. J. 1479=38 C. W. N. 659.

See also 15 M. 63; 15 Ind Cas. 985; P L. R. 1900 Cr 83; 10 C. P. L. R. Cr. 16; 7. C. W. N. 220; 1 L B R 340, 1 B. 219; 10 O. C. 112, 60 Ind. Cas. 437; 56 Ind. Cas. 160.

Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

81. The Court shall presume the genuineness of every document purporting to be *the London Gazette* or *the Gazette of India* or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

English law—The Government Gazettes of London, Edinburgh and Dublin are admissible (and sometimes conclusive) evidence of the public, but not of the private matters contained therein. *Phipson, Ev.* 296. High Court can presume genuineness of notification produced before it and hold production sufficient under s. 81. 134 Ind. Cas. 769=32 Cr. L. J. 1227=A. I. R. 1931 Lah. 273.

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court, purporting to be a document which by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature, is genuine and that the person signing it held, at the time when he signed it the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Scope—"The object of this section is to give currency in the Courts of India to the presumptions which with regard to certain classes of documents are recognised in the English Courts Such documents are declared to be admissible in India

are admissible in English law" *Cunningham, Ev.* 175, 176. This section enacts that the document shall be admissible in India for the same purpose for which it would be admissible in England and Ireland (*Woodroffe, Ev.*).

Presumption as to maps or plans made by authority of Government

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Principle—The general ground of reception is that such documents contain the results of inquiries made under competent public authority and concerning matters in which the public are interested (*Phipson, Ev.* 313).

Accuracy.—Accuracy of Amin's map means accuracy of drawing and measurement It has no reference to correctness of boundaries, etc., in relation to rights of parties. 25 W. R. 179. Government map is admissible under this section 9 M. L. T. 415. But Government *chittas* made for its private use are not admissible in evidence against private parties for proving the character or tenure of the lands, described therein 9 C. 741. A *thauk bust* map is presumed to be accurate under this section. 22 W. R. 519; 5 C. 822; 30 C. 291 (P. C.)=7 C. W. N, 193; 34 C. L. J. 205. Cadastral survey map has presumptive value even as against landlord of

neighbouring estate, A. I. R. 1933 Pat. 671. There is presumption as to correctness of map prepared by Government survey office A. I. R. 1931 Pat. 436=13 P. L. T. 73; see also A. I. R. 1933 Pat. 555; A. I R. 1933 Pat. 671. Presumption of actual possession raised by survey entry is stronger in cultivable land than when it is unfit for cultivation. A. I. R 1933 Pat. 671. Rennel's map indicates correctly the course of rivers, but it can not be regarded as giving correctly the direction of villages. 56 C. L. J 369=A. I. R. 1933 Cal 222.

Presumption as to collections of laws and reports of decisions.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Scope.—The general rule, as to the proof of foreign law, is that the law which is written, that is, statute law, must be proved by a copy properly authenticated; and the unwritten law must be proved by the testimony of experts, that is, by those acquainted with the law. *Bur Jones* § 502. *Lord Chief Justice Denham* observed in *Sussex Peerage Case*, 11 Clark and F. 85; "There does not appear to be in fact any real difference of opinion—there is no question raised here as to any executive mode of getting at this evidence for we have both materials of knowledge offered to us. We have the witness, and he states the law, which he says is correctly laid down in these books The books are produced, but the witness describes them as

[illegible] admitted in such Courts"

Presumption as to powers-of-attorney.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.

Cases.—A power-of-attorney given by the executors under a Will to a certain person authorising him to apply for letters of administration, did not purport to have been executed in the presence of a Notary Public or any other of the persons designated in this section. 21 M. 492 In order to comply with the provisions of this section, the power-of-attorney must be executed before or be authenticated by one of the persons mentioned in the section. 16 C. 776. This section is mandatory. When [illegible] been executed before, [illegible] the Court, an affidavit of [illegible] er-of-attorney being the [illegible] 3 C. 625. The language [illegible] vision contained in this section is of an exhaustive character and that other legal modes of proving the excution of a power-of-attorney are not admissible. 21 M. 492. A registered power-of-attorney is admissible in evidence to prove the agency under this section and unless its genuineness is suspected in which case proof of its execution can be called for, the agent should be allowed to appear and act within the meaning of O. III rule 2 of C. P. Code. 23 Ind. Cas. 661.

Presumption as to certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India [in or for] such country to be the manner commonly is use in that country for the certification of copies of judicial records.

[An officer who, with respect to any territory or place not forming part of Her Majesty's dominions is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act, 1897,* shall for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place].

Legislative changes—The words within brackets in para I have been substituted by Act 3 of 1891. The last para has been substituted by Act V of 1899, s 4.

Scope—This section lays down that if a copy of a foreign judicial record
Court may presume it to be genuine
not exclude other proof. 2 Bom. L. R
, Mad. Jur. 14; 22 W. R. 303 The
cannot be dispensed with here because
it can be obtained at any time. 5 Lah. 105.

Cases—It is doubtful whether the notification in *the Calcutta Gazette* of the 8th April, 1879, by the then Deputy Commissioner of Cooch Behar, regarding the mode of certifying copies of judicial records as correct copies, after the Governor General in C ... notified that decrees of Coc ... of British Indian Courts, ... e Evidence Act, when ther ... nt in Cooch Behar. 14 C 546.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to books, maps and charts.

Scope.—A Court is justified in referring to books published long before the suit, in which the usage of the institution and its history are described both being matters relevant to the suit. 15 M. 241.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to telegraphic messages

Scope—This section allows the Courts to treat telegraphic messages received, as if they were the original sent, with the exception, that a presumption is not to be made as to the person by whom they were delivered for transmission and, unless the non-production of the original is accounted for, secondary evidence of their contents is inadmissible U. B. R (1847-1901), Vol. II. 384. The Court is forbidden by the express provisions of this section to make any presumption as to the person by whom the telegram was sent. 42 M. 85=37 M.L.J. 81. Where original of telegram was not proved to be in handwriting of sender, no presumption arises under s. 88. A I. R 1933 Pat. 96=34 Cr. L J 421=13 P L. T. 802

89. The Court shall presume that every document, called for and not produced after notice to produce was attested, stamped and executed in the manner required by law.

Presumption as to due execution, etc, of documents not produced

Notes—Where the attesting witnesses of a mortgage deed were dead, where it was proved that the mortgagor had executed the deed and that it had been returned to him at the time of the sale of the mortgaged property to the mortgagee, and

* Act X of 1897.

where the mortgagor failed to produce the deed before Court, though called upon to do so; *Held* that the execution of the mortgage deed was in view of this section of the Evidence Act satisfactorily established irrespective of the provision of s. 68. 34 Ind. Cas. 168.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Presumtion as to documents thirty years old.

Explanation—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his title to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possessions which were deposited with him by B for safe custody. The custody is proper.

Scope.—A document thirty years old *i. e.* a document dated thirty years back. proves itself, if produced from proper custody as an ancient document. *Anderson* v. *Weston*, 9 L. J. C. P. 194. The rule "that ancient documents" or those thirty years old, prove themselves or in other words, are presumed to have been duly executed
n proper custody; that is, not necessarily from
tody but from any custody consistent with their
which they might reasonably be expected to be
be. *Bishop of Meath* v. *Mayor of Winchester*, 3 Bingham, N. C. 183; *Cockle Cas.* 333. Under this section the Court can presume the genuineness of a document which was not thirty years old either on the date of the
date when argu-
Cas. 96; 41 M.L.
Ind. Cas. 314; 49
Ind. Cas. 419; 15 N.L.R. 192; 6 O.L.J. 311; 26 Ind. Cas. 117; 13 A.L.J. 921; 2 L.W. 509; 5 P W R. 1915. A. I. R. 1934 Lah. 885; A. I. R. 1934 Cal 772=38 C. W. N.
A. I. R. 1933 Oudh 170; A. I. R. 1933 Mad.
5; A. I. R 1933 All. 99=1932 A. L. J. 1010.
themselves sufficient to charge person with
L. J. 493. Raising of presumption under
1933 All. 443=1933 A. L. J. 493, see also
ly executed and attested" mean executed
A. I. R. 1931 Oudh 103=5 Luck. 526.
section. 16 N. L. R. 106=55 I
29 C. L. J. 577, A. I. R. 1934 Na
30 years old and is registered
cutant on it is admitted may go to raise a presumption as to its genuineness. But such a presumation does not exclude the right of the person against whom the document is set up to rebut that presumption by showing that it was not properly attested and was therefore inoperative. 55 Ind. Cas. 501. It is open to a party when producing an old document to rely on the presumption under this section and also on its proof and the Court may presume a deed to be genuine even though it is not satisfied with the evidence tendered to prove its execution. 49 Ind. Cas 419. In the case of a copy of a document 30 years old, this section empowers the Court

to presume that the copy is in the handwriting of the person in whose handwriting it purports to be 31 Ind. Cas 579 A Court is entitled to presume under this section that a sale deed more than 30 years old is genuine 35 Ind Cas 598. In practice a Court does not generally decide whether it will make the presumption or not under this section, until all the evidence in the case is before it. 10 A. L. J 87. Where the Court of first instance presumed a document to be genuine under this section, it was competent for the first appellate Court to hold that it should not be presumed to be genuine and to reject it without calling for further proof of the same. 22 M L. J 217=14 Ind. Cas. 394 Raising of presumption under s. 90 is

if without thumb mark, it is not that no presumption can be drawn. A. I. R. 1932 Lah 43 Presumption of disposing mind does not arise A. I. R 1933 Lah. 53.

Cases—75 Ind Cas 57, 73 Ind. Cas 66, 32 M L. T. (H. C) 89; 50 C. 526; 75 Ind. Cas 660, 1923 Bom 364. 1923 Bom 293, 46 Mad 92, 1923 A. 420 (2); 27 C W. N. 964; 9 O & A L R. 893, 13 A. L. J. 921, 19 O. C. 92, 19 O. C. 321; 97 P W. R. 1916=34 Ind. Cas. 168.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other dispositon of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2—Will [admitted to probate in British India] may be proved by the probate.

cases in which the contracts, contained in one document, documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d*) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e*) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Legislative Changes.—The words within brackets in exception 2, were substituted for the words "under the Indian Succession Act" by the Indian Evidence Act, Amendment Act, 1872 (18 of 1872) s 7.

Scope—The general rule laid down in this section is that when the terms of a contract have been reduced to writing no evidence shall be given in proof of the terms of contract except the document itself, or in certain cases, secondary evidence of its contents. But this rule is subject to the important exceptions contained in ss. 95 and 97 30 M. 397; L. B. R. (1872-1892), 650. Where the document containing the transaction is inadmissible for want of registration, no other evidence of the terms of the contract can be received. L. B. R. (1872-1892), 133. When the reduced to writing no evidence of it is .. R (1897-1901) Vol. II. 396. A question a question as to the terms of the contract 45.

Principle.—This rule is founded on the best evidence principle. (*Phipson, Ev.* 506).

Contract—It seems more probable that the word "contract" was employed in a wide and general sense with reference to the whole of the transaction or transactions between all the parties in their several respective relations. U. B. R. (1892-1896) Vol. II. 354 Verbal negotiations leading to express contract in writing can not be set up as independent contract. A. I J. 64; see also 34 Bom. L R. 748=A. I R. 580=60 missible Ind. Cas. 487=34 P. L. R. 194=A. I. R. 1933 ...ive, suit can succeed on loan itself. 142 Ind. Cas. 163 24; see also A. I. R. 1931 Pat. 293=13 P. L. 584; A I. R. 1933 Pat. 575 (F. B.); A I. R. , A. I. R. 1933 Nag. 56=29 N. L. R. 131; A. All. 109=140 Ind. Cas. 117; A. I. R. 1933 Mad. 117=37 M. L. W. 157=1033 M. W. N. 663=64 M. L. J. 79, A. I. R. 1934 All. 271=147 Ind. Cas. 443, 67 M. L. J. 912, 152 Ind. Cas. 370=1934 A. L. J. 1185; A. I R 1934 All. 837; but see 1934 M. W N. 1261=67 M. L. J 595, A. I. R. 1932 Mad. 693=1932 M W N. 793=63 M. L J 303; A. I. R 1933 Mad. 71=1932 M. W. N. 1260=37 M. L. W. 723; A. I. R. 1934 Rang. 389 (F. B.).

Grant—It is doubtful whether the word 'grant' in this section means a grant of property only or refers to other grants also. 27 M. 30.

Application—Where a private transaction is required by law to be in writing *e. g*, a Will, insurance, or where a contract, gra so required has been reduced to w ...ded to be complete and operative as such,—no extrinsic evidence is admissible to supersede the document or to prove the transaction independently (*Phipson, Ev.* 508). This rule is applicable even when the real terms were acted upon before reduction to writing, and although the document itself is inadmissible, *e. g.*, a bill of sale void for want of registration or stamp. Where, however the oral transaction is independent of the document, *e. g.*, ...nding, although a , secured collater- e. Even between strangers, the terms of the transaction can only be shown by the production of the document itself and not by oral testimony. (*Phipson, Ev.* 509). Oral evidence to prove intention of executant is not admissible. A. I. R. 1933 All. 186; see also A. I. R. 1934 Lah. 181.

Exception (1)—The law assumes that any act done in public or any formal act privately performed will be done in due form by the person authorised to perform it. *Harris v. Knight*, 15 P. D. 170.

Exception (2).—The probate of a Will is in the nature of a public document, for it records the act of the Court in admitting the Will to probate. Moreover, a copy of the probate can be seen by any one at Court on payment of requisite fees. It constitutes the legal proof of the title of an executor and it is conclusive against all the world. It is a copy of the Will sealed with the seal of the Court granting the probate, and attached to a certificate which states that the Will has been proved

and registered, and that administration of the goods of the deceased has been granted to one or more of the executors named therein. (*Vide Powell, Ev.* 258).

Explanation (1).—*Vide* illustration (*a*)

Explanation (2)—*Vide* illustration (*c*)

and (*e*)—Extrinsic evidence is some- ... tinguished from the terms of a transac- ... writing Payments of money may be proved by oral testimony although a receipt for the same exists. 7 W. R. 384 ; 4B. 126 ; 1 A. 442 ; 27 C. 951 (P. C.)=4 C. W. N. 631.

Exclusion of evidence of oral agreement

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or substracting from, its terms ;

Proviso (1)—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto ; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law.

Proviso (2)—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3)—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4)—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved :

Provided that the annexing of such incident would not be repugnant to, or inconsistent, with the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts

Illustrations.

(*a*) A policy of insurance is effected on goods "in ships from Calcutta to ... the fact that ... March 1873. ... oney should ... ch contains a map of the property sold The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(*d*) A enters into a written contract with B to work certain mines, the property of B upon certain terms. A was induced to do so by a misrepresentation of B's as to their value This fact may be proved.

(*e*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f*) A orders goods of B by a letter in which nothing is said as to the time of ... rice. A may show

... A gives B a paper in these words: "Bought of A a horse for Rs. 500." B may prove the verbal warranty.

(*h*) A hires lodgings of B, and gives a card on which is written—"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(*i*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(*j*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Legislative changes.—The words "want or failure" were substituted for the words "want of failure" by s. 8 of the Indian Evidence Act Amendment Act, 1872 (18 of 1872).

Notes.—The rule contained in this section is very ancient. *Lord Bacon* observed: "The law will not couple and mingle matter of specialty, which is of higher account, with matter of averment which is of inferior account in law" (*Bacon's Maxims*, Reg 23). "It would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of the parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory.' (*Countess of Rutland's case*, 5 *Coke*, 256). This section applies when document contains all the terms of contract. ... not contain all the terms is on the party ... 2 Bom. 151=56 B. 180=34 Bom. L. R. 26. ... ground for adding terms to unambiguous deed ... 1931 Mad. 785 Extraneous oral evidence ... are clear. A I R. 1931 Nag. 25; 12 Mys. L. J. 11, A. I. R. 1934 Bom. 39=35 Bom. L R 39. One who is not a party to the transaction can show that the transaction was not really what it purports to be. 38 C. W. N. 1004=A. I R. 1934 Cal. 821. The admissibility of oral evidence to contradict or vary the express terms of a written contract is to be determined by the Evidence Act and not by English law. A. I. R. 1934 Bom. 39=35 Bom. L. R. 1197. The executant of a promissory note can show that it was without consideration. A. I. R 1934 All. 1068 see also 67 M L J 6... 1934 M. W. N. ... to let in ... y. A I R. ... barred by ... between ... contra-dict, vary or add to terms. A. I. R. 1933 Lah. 1024. In case of gift in favour of wife, husband can prove that gift was fictitious. 136 Ind. Cas. 642=8 O. W. N. 349=A. I. R. 1931 Oudh 177. Verbal agreement changing time and mode of payment of mortgage money cannot be proved. A. I. R. 1934 Rang. 316. One who is not a party to the contract is not debarred by this section A. I. R. 1934 Bom. 145=36 Bom. L. R. 158=150 Ind. Cas 635.

Scope.—Parol evidence is not admissible to add, to vary or contradict a written agreement, or any transaction in writing. *Meres* v. *Ansel*, 3 Wilson 275; Cockle Cas. 339. "Another and a most important rule of evidence is also based upon the fact that the best method of preserving a clear recollection of the details of any transaction is to set them down in writing. It is for this reason that whenever the ... perty have set out its ... to be a record of ... ther terms by means ... party to alter his liability by introducing terms which are not to be found in the document. Hence it is a clear rule of law that whenever a document purports to be the record of the

ıal intention and agreement of two parties, who have entered into any contract · made any grant of transfer of property, no parol evidence is admissible to contract to vary its terms" (*Powell, Ev.* 181). Oral evidence cannot be adduced to contradict the terms of a written document. 6 M. H. C. 393, see also L B. R. (1872-392), 538, 11 W. R. 450, 12 W. R 264, W. R 1864, 388. Verbal evidence is not admissible to vary or alter the terms of a written contract in cases in which there is o fraud or mistake, and in which the parties intend to express in writing what their words import—as for instance, to show that a deed of sale was intended to operate as a mortgage. 5 W. R. 68, 9 W. R. 251.

Proviso (1).—Parol evidence is admissible to show that a writing is not really the valid transaction which it purports to be Such evidence may therefore be given to prove fraud, mistake, illegality, incapacity, failure of consideration, or other matters affecting the validity of a writing as a document. (*Dobell* v. *Stevens*, 3 L. J. K. B. 89; *Cockle Cas* 341).

Cases—82 Ind Cas. 861, A. I R. 1934 All. 496=148 Ind. Cas. 1124.

Proviso (2)—Parol evidence is admissible to prove any collateral verbal agreement as to any matter on which a document is silent, which is separable from it and not inconsistant with its terms, and which might naturally be omitted from the writing. (L. R. 6 Ex 70=*Cockle Cas* 343) There is no rule that there shall be only one agreement upon any subject. There may be two or more as in the case, if they can consistently stand together; and one may be written and the other oral. If proceedings are taken on the written agreement evidence may be given of the oral agreement. This is not "adding to" the written agreement although it may, at first sight look like it (*Cock'e Cas.* 343). In order that parol evidence may be admissible to prove a collateral agreement, it must not conflict with, or be inconsistent with the written document; the evidence must not amount in effect to adding additional terms to the writing *Angell* v *Duke*, 32 L T. 320. This proviso applies where the document is of an informal character. 7 N L. J. 25 In order to prove a contemporaneous oral agreement, oral evidence of subsequent conduct can under no circumstances be admitted. 4 Lab 258

Cases—3 Bur. L. J. 326; 70 Ind. Cas 844; 1923 Cal 402; 25 Bom L. R. 818; 34 Bom. L. R. 971.

Proviso (3).—Parol evidence to prove any collateral verbal agreement to the effect that a document, apparently complete and operative on its face should be conditioned upon, and not operate until the [illegible]
has not occurred. *Pym* v, *Campbell*, 25 L [illegible]
precedent to the performance of a contract [illegible]
prove such an oral agreement is admissible It is open to a person who admits the execution of a promissory note to plead want of consideration. 45 A. 679. See also 25 Bom L. R. 867.

Cases.—1925 Rang. 83; 1924 A 70, 26 O. C. 36, 71 Ind. Cas. 477; A. I. R. 1931 Bom. 297; A. I R 1932 Lah. 549

Proviso (4)—Parol evidence is admissible to prove any subsquent verbal agreement rescinding or altering the terms of a written document unless writing is required by law to render the transaction in question enforceable, in which case such evidence cannot be given to alter the terms of such document. (*Gass* v. *Lord Nugent*, 2 L J. K B 127, *Cockle Cas* 350). This clause does not exclude evidence of oral agreement substituting a new contract for a previous one in writing and registered. The clause refers only to an oral agreement to rescind or modify such contract. 169 P. R 1883. The proviso does not exclude a distinct subsequent new oral agreement superseding the old one in that. 14 P R. 1889

Cases—2 Mys L. J 124; 74. Ind Cas. 154; A I. R. 1934 Mad. 703=67 M. L. J. 535; A I. R. 1934 Rang 228.

[illegible]

transaction, unless it is inconsistent with the writing. (*Brown* v. *Byrne*, 23 L. J. Q.

(*f*) A orders goods of B by a letter in which nothing is said as to t ... rice. A ...

... gives B a these words: "Bought of A a horse for Rs. 500." B may prove t warranty.

(*h*) A hires lodgings of B, and gives a card on which is written Rs 200 a month" A may prove a verbal agreement that these terms include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, by an attorney, is made between them. It is silent on the subject of may not prove that board was included in the term verbally.

(*i*) A applies to B for a debt due to A by sending a receipt for the keeps the receipt and does not send the money. In a suit for the amount prove this.

(*j*) A and B make a contract in writing to take effect upon the ... certain contingency. The writing is left with B, who sues A upon it. show the circumstances under which it was delivered.

Legislative changes.—The words "want or failure" were substituted f words "want of failure" by s. 8 of the Indian Evidence Act 1872 (18 of 1872).

Notes.—The rule contained in this section is very ancient. *Lord* observed. "The law will not couple and mingle matter of specialty, which higher account, with matter of averment which is of inferior account in (*Bacon's Maxims*, Reg 23). "It would be inconvenient that matters in writing by advice and on consideration, and which finally import the certain truth agreement of the parties should be controlled by averment of the parties proved by the uncertain testimony of slippery memory." (*Countess of Rutland's* 5 *Coke*, 256). This section applies when document contains all the terms Burden of proving that writing does not contain all the terms is on the setting up that plea. A. I. R. 1932 Bom. 151=56 B. 180=34 Bom. L. R. Mere fact that terms are unusual is no ground for adding terms to unambiguous 54 M 973=61 M. L. J. 437=A. I. R. 1931 Mad. 785. Extraneous oral evidence is inadmissible when terms of bond are clear. A I. R. 1931 Nag. 25, 12 Mys L. 11, A. I R. 1934 Bom. 39=35 Bom. L R. 39. One who is not a party to the transaction can show that the transaction was not really what it purports 38 C. W. N. 1004=A. I. R 1934 Cal. 821. The admissibility of oral evidence to contradict or vary the express terms of a written contract is to be de by the Evidence Act and not by English law. A. I. R. 1934 Bom. 39=35 Bom. L. R. 1197 The executant of a promissory note can show that it was without consideration A. I. R. 1934 All. 1068, see also 67 M. L. J. 650=1934 M. W. N. 1382 One of the executants of a promissory note cannot be allowed to let evidence to the effect that he signed the promissory note only as a surety A. I. R. 1933 Lah. 965. Proof of oral agreement varying terms of decree is not barred by s. 92. 131 Ind Cas. 710=25 S L. R. 279=A I. R. 1931 Sind 42. Letters between parties several months before completion of mortgage are not admissible to contradict, vary or add to terms A. I. R. 1933 Lah. 1024. In case of gift in favour of wife, husband can prove that gift was fictitious. 136 Ind. Cas. 642=8 O. W. N. 349=A. I. R. 1931 Oudh 177. Verbal agreement changing time and mode of payment of mortgage money cannot be proved. A. I. R. 1934 Rang. 316. One who is not a party to ... A. I. R. 1934

... would be manifestly unjust to allow either party ... liability by introducing terms which are not to be found in the document. ... it is a clear rule of law that whenever a document purports to be the record of the

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Cases—3 Bur. L. J. 326; 70 Ind. Cas. 844; 1923 Cal 402; 25 Bom. L. R. 818; 34 Bom. L. R. 971.

Proviso (3).—Parol evidence to prove any collateral verbal agreement to the effect that a document, apparently complete and operative on its face should be conditioned upon, and not operate until the happening of, a certain event, which has not occurred. *Pym* v, *Campbell*, 25 L. J Q B. 277. The case of a condition precedent to the performance of a contract in writing is different and evidence to prove such an oral agreement is admissible. It is open to a person who admits the execution of a promissory note to plead want of consideration. 45 A. 679. See also 25 Bom L. R. 867.

Cases.—1925 Rang 83; 1924 A 70; 26 O. C. 36; 71 Ind. Cas. 477; A. I. R. 1931 Bom. 297; A. I. R. 1932 Lah. 549.

[illegible] missible to prove any subsquent verbal agree- [illegible] s of a written document unless writing is re- [illegible] in question enforceable, in which case such [illegible] rms of such document. (*Gass* v. *Lord Nugent*, 2 L J. K B. 127, *Cockle Cas.* 350). This clause does not exclude evidence of oral agreement substituting a new contract for a previous one in writing and registered. The clause refers only to an oral agreement to rescind or modify such contract. 169 P. R 1883 The proviso does not exclude a distinct subsequent new oral agree- ment superseding the old one in that 14 P R. 1889.

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Proviso [illegible]
application, [illegible]
to a written [illegible]
Dallison, D [illegible]
trade or m [illegible]
such transaction as that in question, or as to the meaning of words, or terms in order that it may be applied to the subject-matter and bind the parties to a transaction, unless it is inconsistent with the writing. (*Brown* v. *Byrne*,

B. 313). Extrinsic evidence of custom and usage is admissible to annex incidents to written contracts, only when the incidents which it is sought to import into the contract are consistent. 17 B 129. Notwithstanding an admission in a sale deed that the consideration has been received, it is open to the vendor to prove that no consideration has been actually paid. 22 A. 370 P. C ; 10 C. L J. 27.

Proviso (6).—A contract reduced to writing must be construed on a consideration of the document itself, with only such extrinsic evidence of circumstances as may be required to show the relation of the written language to existing facts 36 Ind. Cas. 597.

In a suit for bond, evidence of non-payment of consideration is admissible. 82 Ind. Cas. 347 Where a bill of lading evidences a contract of shipping no evidence of any oral agreement varying its terms is admissible. 79 Ind. Cas 456 Where a date is fixed in the contract for performing the contract, oral evidence to extend the ... of the contract as to make ... ent oral agreement not to ... ent is a registered one. 1942 Cal 38. In cases of patent ambiguity no evidence can be given to supply the defect. 80 Ind. Cas 944. But parol evidence is admissible for the purpose of explaining latent ambiguities. *Doe* v *Needs*, 6 L. J. Ex 59. The view that there has been introduced into the law of India such a radical change in the Law of Evidence as would have the effect of ... which before the Evidence ... correct. 47 M. 429 (P. C ... certain terms of a contract ... is not precluded by this section. 27 C. W. N 336.

Cases—4 Pat. L. T. 577 ; 36 Ind. Cas. 7

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

how they were meant to be filled.

Notes—There are two sorts of ambiguities, patent and latent. A latent ambiguity is one which do... is created or shown b... allowed to explain or ... of the document. Par... (*Cockle Cas.* 356). "A ... hands of an ordinarily ... guity, but there is neverth... is latent : if he detects th... patent. Thus in illustratio... could not be filled in by ... illustration to s. 95, no one could detect any ambiguity from merely reading ... instrument. The ambiguity does not consist in the language, but is introduced by extrinsic circumstances, and the maxim is *quod ex faco oritur ambegum verificatione facti tollitur.*" *Norton, Ev.* 279.

Scope—... persons to w... explain latent ... cumstances o... *Doe* v. *Needs* ... total blanks ... so defective or ambiguous as to be meaningless in themselves, by showing ... party to such document intended to say. *Baylies* v. *Attorney General*, 2 At 239. See 1 A 275 ; 35 Cr. L. J. 87. Where a bequest is to "a son of L or G" extrinsic evidence is not admissible to show which particular son of L or G was intended to be benefited. 12 Pat. 708=A. I R. 1933 Pat. 647.

Exclusion of evidence against application of document to existing facts

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Scope.—"This section falls under the more general rule of English law that where the words of a document are free from ambiguity, and external circumstances do not create any doubt or difficulty as to the proper application of the words, the document is to be construed according to the plain and common meaning of the words, and that, in such case, extrinsic evidence, for the purpose of explaining the document according to the supposed intention of the parties is inadmissible." *Cunn. Ev.* 281. When the language used in a document is plain and applies accurately to existing facts, evidence is not admissible for the purpose of showing that it was not meant to apply to those facts. 29 Ind. Cas 201 ; see also 150 Ind. Cas 563=36 P. L. R. 61 When a Court is executing an award it is only in cases where the words are ambiguous or capable of more than one interpretation that oral evidence can be given as to their meaning. 78 Ind. Cas 80.

Evidence as to document unmeaning in reference to existing facts

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

Scope—This section and sections 96 and 97 lay down the rule as regards latent ambiguities. Parol evidence is admissible to show the subject matter to which, or the persons to whom, a written instrument applies or refers ; and for such purpose to explain the latent ambiguities. Such parol evidence may be of the surrounding circumstances, or apparently, of statements of intention made by parties to a document. *Doe v Needs*, 6 L J. Ex. 59, *Cockle Cas.* 355, see also A. I. R. 1934 Cal. 569. Where the description of property sold is such that one portion of it applies to the whole of the house but the boundaries given below apply only to a portion of the same and both read together do not apply correctly either to the whole house or to a portion of it, a case of latent ambiguity arises. Extrinsic evi- [illegible] whether by the descrip- [illegible] convey the whole house [illegible] S. 42 ; 71 Ind Cas. 589. Where document is meaningless, extrinsic evidence is admissible to prove its true meaning. 9 O. W N. 1024=8 Luck. 195=A. I. R. 1933 Oudh 80. Oral evidence *can be given to prove the mistake as to name of creditor.* A. I R 1931 Oudh 54=7 O. W. N. 1195.

Evidence as to application of language which can apply to one only of several persons.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations

(*a*) A agrees to sell to B, for Rs 1,000, "my white horse." A has two wh[illegible] horses. Evidence may be given of facts which show which of them was meant.

(*b*) A agrees to accompany B to Haidrabad. Evidence may be given of facts showing whether Haidrabad in the Deccan or Haidrabad in Sind was meant.

Scope.—When there are two or more persons or things, and each of them exactly answers to the description in the Will, then all manner of parol evidence is ... ment appears on its face to be free ... made to apply it to the persons or ... re equally applicable to two or more ... uch a case extrinsic evidence is ad- ... an instrument contains an ambiguity, evidence of user under it may be given in order to show the sense in which the ... to a modern as well as an ancient ... Cas. 696. If the language of a docu- ... but cannot have intended to apply ... ch it is intended to apply. 10 Bur. L. T. 246.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

A agrees to sell to B "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

... the preceding one; in that there is ... s; here there is a language partially ... able to neither. In this case, as in the former, extrinsic evidence is admissible for discovering the meaning. It is an extension of the rule laid down in section 95 *Cunningham's Evidence*, 286. Such parol evidence may be of the surrounding circumstances, for, apparently, of statements of intention made by parties to a document. *Doe* v. *Needs*, 6 L. J. Ex. 59. Parol evidence is admissible only when the ambiguities cannot be otherwise explained by construction of the contents (*Colpoys* v. *Colpoys*, Jacob 451; *Cockle Cas.* 356). Where in a sale certificate there are two descriptions of the property which cannot be reconciled, it is open to the Court to look at the decree and decide which govern the sale, 1924 A. 856.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, obsolete, technical, local and provincial expressions, or abbreviations and words used in a peculiar sense

Evidence as to meaning of illegible characters, etc.

Illustration.

A, a sculptor, agrees to sell to B, "all my models." A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Scope—Put the case of short-hand writers' notes, when a Court, unskilled the ... or interpreted, before it can attach any ... re, the writing is that in ordinary use, but ... adduced to decipher it; as also in the case ... instances brought together in this section (*Norton*, ... e meaning of a written document parol ... se in which not only words, but also ... have been used. Such evidence may be ... to have ... the meani... on ... as ... z. ... and their peculiar meaning, when found ... connection ...

transaction, has been fixed, by parol testimony of the sense in which they were usually received. 34 C. L. J. 160. See also 68 Ind. Cas 138.

Who may give evidence of agreement varying terms of document.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration

A and B make a contract in writing that B shall sell A certain cotton to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C if it affected his interests.

Scope—This section, being merely an enabling provision, cannot be held to prohibit the reception of evidence as to a fact in issue or a relevant fact admissible independently thereof. 27 M. 329. The rule of exclusion of oral evidence, embodied in s. 92 of the Act, is limited in its operation to parties to the instruments, which is sought to be contradicted or varied, and to the representative in interest. This section enables strangers to an instrument to prove the real nature of the transaction by parol evidence. 2 C. L. J 338 This section gives free hand to persons who are not parties and by necessary implications when read with section 92, gives similar [illegible] 115. See [illegible] ection 92 [illegible] he same [illegible] in s. 92 [illegible] 53 Ind. Cas. 242.

Saving of provisions of Indian Succession Act relating to Wills

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865)* as to the construction of Wills.

Scope.—Act X [illegible] by Act 39 of 1925. [illegible] other than Wills an [illegible] sions contained in that Act.

PART III.

Production and Effect of Evidence.

CHAPTER VII.

Of the Burden of Proof.

Burden of proof.

101. Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b*) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

*See now Act XXXIX of 1925

Different meaning of the term.—The expression "burden of proof" has been used in a double sense : (*a*) As meaning the duty of the person alleging the case to prove it, (*b*) As meaning the duty of the one party or the other to introduce evidence.

1.—" The theory of burden of proof it is a simple principle and one a case, and has become from long t seems the only reasonable and is naturally upon the person who puts it forward. The burden of proof in any action is fixed by the pleadings upon the shoulders of the one party or the other. If the pleadings consist of the allegations of certain facts by the plaintiff, and their denial by the defendant the burden of tive, is upon the plaintiff. In order to alleges certain facts, and the defen- which he claims to be a defence, the burden of proof is on the defendant. It is not upon the plaintiff, because it is not necessary for him to prove his case on account of the admission of all the facts. An admission upon the trial does not affect the burden of proof. To relieve the plaintiff it must be a formal admission in the defendant's pleading of the facts which constitute the plaintiff's case. The defendant, if he sets up in his answer other facts which he claims to be a defence, is then the one who has alleged the facts which are in issue; and he must prove them " *McKelvey's Law of Evidence*, p. 68.

Bu: necess of the issue r issue, one party and of others on the other party. The position is practically this, that judgment would be given as given sufficient evidence given, the burden of proof shifts to the other party, and may be repeatedly so shifted. In a criminal case there is generally no difficulty, as all the allegations are invariably made by the prosecution on whom the general burden of proof invariably lies. So the burden of proof of any particular fact in issue is upon the party who alleges the affirmative of such fact. This rule as to the burden of proof applies generally to negative averments (*Cockle Cas* 123=124) See also 35 C. 1051 ; 9 W. R. 192 ; 39 C. 245 ; 47 M. 337 (P. C)= 46 M. L J 546 ; 75 Ind. Cas 733, 3 U. P. L. R. 44.

On whom burden of proof lies

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the Will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession

B says that it was obtained by fraud,

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

party who would be unsuccess- uch party has the right to begin. upon the party who allows the 64 ; *Cockle Cas.* 125). In determining burden of proof the Court should consider what is the substantive fact to be made out, and on whom it lies to make out. It is not so much the form of the issue which ought to be considered as the substance and effect of it. *Soward* v. *Leggatt*, 7 C. and P. 613 "The test, therefore, as to the burden of proof or onus of proof

whichever term is used, is simply this : to ask one-self which party will be successful if no evidence is given, (or if no more evidence is given...the parties from moment to moment may reach points at which the onus of proof shifts. As soon as he brings evidence which, until it is answered, rebuts the evidence against which he is contending, then the balance descends on the other side, and the burden rolls over until again there is evidence which once more turns the scale." *Per Bawen L. J.* in *Abrath* v. *North-Western Railway Co.*, L. R. 11 Q B. D 440. In the same case *Brett M. R.* says. "But then, it is contended (I think fallaciously) that if the plaintiff has given *prima facie* evidence which, unless it be answered, will entitle ... burden of proof is shifted to the ... cannot assent to it. It seems ... The plaintiff may give *prima* ... contradictory evidence or by the evidence of additional facts, ought to lead the jury to find the question in his favour. The defendant may give evidence either by contradicting the plaintiff's evidence or by proving other facts. The jury have to consider, upon the evidence given upon both sides, whether they are satisfied in favour of the plaintiff with respect to the question which he calls upon to answer. If they are they must find for the plaintiff; but if upon a consideration of the facts, they come clearly to the opinion that the question ought to be answered against the plaintiff, they ... difficulty : Suppose the jury, ... as to which way they are to ... intiff; in that case, also the ... been able by the additional ... whole jury to a real state of ... proof which was upon him". So the burden of proof fixes upon the party who has the duty of first going forward with the case. If he fails to introduce any evidence at all, or if he fails to introduce sufficient evidence to justify a submission of a case to the Court, the case without ... must go against him. If he ... ie case to the Court, the ... e Court may or may not find ... If however, he has intro- ... "*prima facie* case," then in ... Court would be bound to find in his favour.

Right here we run up against the other sort of burden of proof noticed above, which is not really burden of proof at all, but only the use of that term to express something very different When the plaintiff has introduced enough evidence to ... he verdict for the ... or weaken the ... n of going for- ... d to distinguish ... proof is only a ... *es to win, rests* " ... Where a person ... n him. A. I. R. ... e deed admitting the receipt of consideration were incorrect lies heavily on the executant. 33 P. L R. 207=138 Ind. Cas 525 ; 12 P. L. T 231=A. I R. 1931 Pat 266 Where the transferer alleges that in fact it is not a transfer the onus lies on him to prove his allegation. A I R. 1934 All. 226 ; see also A. I. R. 1934 P C. 49=A. I. R. 1934 P. C. 68=38 C. W. N. 393 (P C.)

103 The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Burden of proof as to particular fact

Illustration.

(*a*) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Cases.—27 A. 71=1 A. L. J. 423 ; 11 B. 433 ; U. B. R. (1897-1901) Vol II, 412 ; U. B. R. (1897-1901) Vol. II, 407.

Scope.—The term "burden of proof" is used in two senses : as regards (1) the whole case, (2) particular facts. Section 10 deals with burden of proof of the first class and this section deals with burden of proof of the second class. The burden of proof of any particular fact in issue is upon the party who alleges the affirmative of such fact. It is only necessary to add, and to emphasise, that the substance, and not the mere *form* of the pleading is to be considered. The position can not be altered, nor can the Court be misled by the ingenious manipulation of language. This rule as to the burden of proof applies generally to negative averments unless by reason of their complexity or difficulty of poof or by virtue of some statutory provision the burden is upon the person denying the allegatio[illegible]

[illegible]

meaning. The whole of the facts, however, numerous and complicated, which go to make up the prisoner's guilt must be proved by the prosecution. If the prisoner wishes to prove a particular fact, his *alibi*, for instance, he must prove it. If the prosecutor wishes to prove the case, not by independent oral testimony, but by the isolated fact of the prisoner's admission, or if he wishes to throw that is an additional fact, he must prove it. (*Norton, Ev.* 289-90).

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(*a*) A wishes to prove a dying declaration by B. A must prove B's death

(*b*) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

Scope.—The meaning of this section is that no person shall be allowed to give evidence before he has shown that he is in a legal position to do so. *Vide, s.* 136. *Clause* 2 (*Norton, Ev.* 290).

Burden of proving that case of accused comes within exceptions.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code,* or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(*a*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b*) A, accused of murder, alleges that, by grave and sudden provocation, he was [illegible]

[illegible] enal Code provides that whoever, except in the [illegible] section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

Scope—In criminal cases, the general rule is that the prosecution must prove the facts alleged by it. This section is an exception to the general rule. Under the provision of this section, an answer setting up the right of private defence, must be supported by evidence, giving a full and true account of the transaction from which the charge against an accused person arises. No accused person can, at the

* Act XLV of 1860.

same time, deny committing an act and justifying it. 1 C. L. R. 62 ; A. W. N. 1898 209 ; A. W. N. 1898, 210. The burden of proving the existence of circumstances bringing a case within any special exception or proviso contained in any part of the Penal Code is upon the person accused, and the Court shall presume the absence of such circumstances. 8 Ind. Cas. 259=11 Cr L. J. 612. See also 7 A. L. J. 438 ; 11 C. L. R 232 P. C. ; A. W. N. 1899, 113., A I. R. 1933 Lah. 1055, A. I. R. 1933 Rang. 142, A. I. R. 1931 Rang. 83 ; A. I. R. 1934 Oudh 485=35 Cr. L J. 1489.

Special exception.—The onus to show that a game is a game of mere skill is on the accused. 15 Cr. L J. 276=23 Ind. Cas. 484 ; see 8 C. W. N. 714, U. B. R. (1893-1900) 207 ; 6 A. 200, 50 C. 318 ; 45 A. 329.

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necessarily
Cas. 901.

Burden of proving fact especially within knowledge

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(*a*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b*) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him

Turner, 5 L. S 206 Where a suit was brought by the legal representative of a deceased person who was killed at an accident, while travelling in the train of the

t of
by
aid,
1 Moor's Privy Council Cases, N. S P. 131, namely, that the fact of a breach on a
nance
law
, the
L. J.
339, 38 C. 127, 1 A 53 (F B.), 11 Ind. Cas. 202. Section 106 applies only to parties to suit. A. I. R. 1933 P C 87=37 C W N. 657 Onus is on railway company to show time of loss. A. I. R. 1932 All. 584=1932 A L J. 788.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Scope.—Where there is proof of the existence of a state of things and no evidence of its cessation, the presumption is that such state of things continues for a reasonable length of time
person who has been once
at first, on the party who asse
ever, there be a question as to
jury. (*R.* v. *Willshire*, 6 Q.
date may or may not afford a reasonable inference that he was living at the subs
ent date, (*Powell*, *Ev.* 411).

108. [Provided that when] the question is whether a man is alive or dead and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [shifted to] the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

Legislative Changes.—The words within brackets were substituted by Act 18 of 1872.

Scope.—There is a presumption that a person who is proved not to have been heard of for seven years, by those who would be likely to hear of him if living, is dead; but there is no presumption that he died at any particular time. *Nepean* v *I* . . . v. *Henderson*, 2 Sim & (. . . hich the Court presumes . . . for a long period of time, is this—that, if he were living, he would probably have communicated with some of his friends and relatives. It is a conclusion which the Court draws from the probabilities of the case. It is quite clear, therefore, that when no such probability exists, the presumption cannot arise

But this presumption will not arise if the person in question left his home under circumstances which rendered it improbable that he would communicate with his

A. I. R. 1934 Oudh 298 (F. B); A. I. R. 1932 All. 365; A. I R. 1932 Lah. 45; A. I. R. 1931 Lah. 582 (F. B.) Ss. 107 and 108 lay down a rule as to the presumption

time not affected by the presumption of law as to the seven years. 8 A. 714=A W. N. 1886, 239; 23 B. 296; 14 M. L. J. 464. The presumption of death under this section is a presumption that the man was dead when the question was raised, that is, at the date of the suit, and not at any earlier period. The English law is otherwise 37 C. 103=14 C. W. N. 341; 35 C. 25; 8 A L. J. 1052 (F. B.); *Contra*, 8 Ind. Cas. 55. This section supersedes the rule of Mahomedan law that a man will be presumed dead only after 90 years from the date of his birth. 42 P. R. 1892, A. I. R. 1934 Oudh 41. Where two brothers die in same catastrophe, there is no presumption who dies first. A. I. R. 1934 Oudh 101. Where a person was not heard of for 40 years, burden of proving that he is alive is on party alleging it. A. I. R. 1931 Oudh 40= 6 Luck. 407=7 O. W. N. 1120.

Cases.—41 M. L. J. 295; 19 A. L J. 713; 1 Pat. 475; L. R. 3 A. 393 (Rev.); 64 Ind. Cas. 468; 43 A. 673; 1923 Bom. 208; 1923 Lah. 174; 45 A. 466; 1923 M. 182; 47 B. 451.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

. . . most practi-

at such an earlier time that, according to its nature, it may fairly be presum . . . have lasted to the moment in question. (*Cockle Cas.* 29).

Scope.—Here the presumptio . . . things once shown to exist. *Pri* . . . partners continue their business as . . . v. *Peace*, 33 L. J. Ch. 290; or a tenant holds over after the expiration o . . .

Torraino v. *Young*, 6 C. & P. 8 ; or if in respect to the relation of principal and agent ; *Rayan* v *Lambs*, 12 Q. B. D. 460 ; if the facts existing be once established, the continuance of the partnership, the tenancy or authority on the old footing will be presumed. *Norton, Ev.* 295.

Partners—11 P. R. 1897.

Tenants—4 C. 314 ; U. B. R. (1892-1896) Vol. II, 363 ; U. B. R. (1892-1901) Vol. II, 414.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving, that he is not the owner, is on the person who affirms that he is not the owner.

Burden of proof as to ownership.

Scope—The fact of possession as owner is sufficient *prima facie* evidence of ownership, without the aid of any documentary proof or title deeds on the subject until such further evidence is rendered necessary in support of the *prima facie* case of ownership which they made, in consequence of the production of some contrary proof on the othe
clearly relevant
latter probable.
(*Cockle Cas* 85)
be inferred are very various, as for instance, the cutting of timber, the repairing of fences or banks, the perambulation of boundaries of a manor or parish, the taking of wreck on the foreshore, and the granting to other of licenses or leases under which possession is taken and held ; also the receipt of rents from tenants of the property ; for all these acts are fractions of that sum-total of enjoyment which characterises *dominium*" (Wills, 60) If a person is in actual possession, that is evidence that he is seised in fee *Doe* v. *Penfold*, 8 C and P. 536 ; *Jones* v. *Williams*, 2 M. and W 326. Possession is *prima facie* evidence of complete ownership throwing the burden of showing that it is held on some inferior title, upon him who seeks to dislodge the possessor 1 B 91 ; A. I. R. 1934 Lah. 324=36 P. L. R. 64. The word possession in this section is to be understood as opposed to judicial possession and to denote actual present possession. U. B R 1905 *Ev* 7 ; 25 B. 287. The person who wants to oust a person in possession must prove absolute private proprietary title. U. B. R. (1897 1901) Vol II, 416. Such title must be subsisting title and not previous ownership U. B. R. (1897-1901), Vol. II, 421. See 13 Bur. L. T 205

Cases—36 C L. J 396 ; 1923 Bom 361 ; 26 C W. N 305

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Proof of good faith in transactions where one party is in relation of active confidence.

Illustrations.

(*a*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Scope.—The principle on which this section is based is a long established doctrine of equity and it has been repeatedly applied with special emphasis by the Lords of the Privy Council to transactions to which the women of this country are parties. A. W. N. 1884, 84 This principle is applied by the English Courts to transactions between legal or medical practitioners and their patients, spiritual advisers and members of their congregations, trustees and their *cestues que-trustent*, guardians and wards (*Cunningham's Evidence*, 305) Where the husband stood in a position of active confidence to his wife and she entered into a transaction under his guidance the burden of proving good faith is on him. To uphold the transactions, it must be shown she was given that care and advice which was due to her in her

situation. 78 Ind. Cas. 850. Where a person is in position of active confidence, burden of proving that he is alive is on party alleging it. 7 O. W. N. 1120=6 Luck. 407=A. I. R. 1931 Oudh 40; see also A. I. R. 1931 Nag. 69=134 Ind. Cas. 259; A. I. R. 1934 All. 507=1934 A. L. J. 817.

Birth during marriage conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Scope.—"In every case where a child is born in lawful wedlock, the husband not being separated from his wife by sentence of divorce sexual intercourse is presumed to have taken place between the husband and wife, until that presumption is encountered by such evidence as proves, to the satisfaction of those who are to decide the question, that such sexual intercourse did not take place at any time, when, by such intercourse, the husband could, according to the laws of nature, be the father of such child." *Per Sir James Mansfield in Banbury Peerage Case*, 1 L. J. Ch. 106. The presumption of legitimacy arising from the birth of a child during wedlock, the husband and wife not being proved to be impotent, and having opportunities of access to each other, during the period in which a child be begotten and born in the course of nature, may be rebutted by circumstances inducing a contrary presumption This presump
such evidence shoul
marriage was also
presumption is in
1932 Mad. 39=61 M
1934 P C. 49=38 C. ... The word access means no more than oppor... of intercourse. *Ibid*; see also 66 M. L. J. 279=A I. R. 1934 Mad. 310; A. I. R. 1932 Mad 44=55 M. 292; A I R. 1934 Nag. 124 Where filiation is proved legitimacy is presumed. A I. R 1933 Lah. 5 20=146 Ind. Cas 198.

Cases—146 P. L. R. 1910; 5 C. L. J 1; 79 P. R. 1907; 7 Bom. L. R. 95; 29 C. 41 (P. C.); 25 A 403 P. C.; 28 P. R. 1906; 10 Ind. Cas. 389; 68 Ind. Cas. 465; 44 A 470.

Proof of cession of territory.

113. A notification in *the Gazette of India*, that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Notes—It is doubtful whether the Government of India without the sanction of the Parliament can make a valid cession of territory. *Vide* 10 B H. C R. 37. On appeal to Privy Council in 1 B 367.

Court may presume existence of certain facts.

114 The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(*a*) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

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to exist, is still in existence;

(*e*) that the judicial and official acts have been regularly performed ;

(*f*) that the common course of business has been followed in particular cases ;

(*g*) that evidence which could be and is not produced would, if produced, be unfavourable to the person who witholds it ;

(*h*) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(*i*) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

as to *illustration* (*a*)—a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business ;

as to *illustration* (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery B, a person of equally good character, who also took part in the arrangement describes precisely what was done, and admits and explains the common carelessness of A and himself ;

as to *illustration* (*b*)—a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives

rroborate each other in

;

was a man of business.

under A's influence.

as to *illustration* (*d*)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course ;

as to *illustration* (*e*)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances ,

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as to *illustration* (*h*)—a man refuses to answer a question which he is not compelled by law to answer, but the anwer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked

as to *illustration* (*i*)— a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it

Scope—Where the fact giving rise to such a presumption as may be drawn under this section, is undisputed and no explanation negativing the presumption is offered, the Court is justified in laying the onus proper where but for the presumption, the onus could not be laid. But where explanation, negativing the presumption is forthcoming, the Court is not in a position to draw the presumption until it has heard the evide

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instances. 69 Ind. Cas 257. ... 35 C. W. N. 291=33 Cr. L. J. 40=A. I. R. 1931 Cal. 617 ; see also A I. R. 1931 Pat. 219=12 P. L. T. 233.

Illustration (a)—The Court may presume, from the possession of stolen property, that the possessor is either the thief or has received it knowing it to be stolen property, unless the possession is accounted for. 15 P. R. 1891 Cr. Where a deaf mute was found in possession of stolen property a week after the theft, *held* in th special circumstances of the case, the presumption authorised under this illustra

cannot be applied. 25 Ind. Cas. 330. Where after six months after the dacoity some common ornaments were found in the possession of the accused, held, that, having regard to the nature of the ornaments which were of common description, and were likely to pass from hand to hand, the case was not covered by s. 114. illustration (*a*), and the accused should not have been called upon to explain their possession. 3 A. L J. 808=29 A. 138; see also A. W. N. 1881, 155. But when stolen property is found in a person's possession soon after the theft the Court may presume that the party is either a thief or a receiver of stolen property. 2 Weir 489, 1 L B. R. 382, 13 Cr. L. J. 140; 11 A. L J. 94; L. W. 418; 32 C. L. J. 119, A. I. R. 1934 All. 455; A. I. R. 1934 Rang. 80.

Cases.—20 A. L J. 173.

Clause (b)—When there is no sufficient corroboration of the testimony of an accomplice, a conviction should not be based on such evidence By this section the Court may presume that an accomplice is unworthy of credit unless corroborated in material particulars. 22 M. 491; 9 Ind. Cas. 978, 24 Ind. Cas. 146; 14 B 331. 6 Bom L. R. 1091=22 B. 264; 16 P. R. 1886 Cr.; 9 Ind Cas. 768; 8 Ind. Cas. 193, 2 Bom. L. R. 610; 10 C. W. N. 669 [illegible]
Rat Un. Cr. C. 750, 4 Lah L. J. 284; 1 [illegible]
The term "accomplice" signifies a [illegible]
sustains such a relation to the criminal act that he could be jointly indicted with the accused he is an accomplice. 27 M. 271. There is no rule of law or practice that the self-incriminating portion of the evidence of an accomplice is unworthy of belief unless corroborated. 6 Bom L. R 443 The testimony of an accomplice is not required by law to be corroborated. The rule of practice which lays down the requirement should be applied with due regard to the varying circumstances of each particular case. 15 Bom. L. R. 288, see also 28 C. 339, 16 C. W. N. 669; 63 I C. 612, 2 Pat. L. T. 757.

Cases.—4 Lah, L. J. 405; 68 Ind. Cas. 113; 65 Ind. Cas. 622; 67 Ind. Cas 343, 1923 Lah 385.

Illustration (c).—This illustration authorises the presumption that a particular judicial or official act has been performed regularly, but it does not authorise the presumption without any evidence that the act has been performed. 6 C. W. N. 845.

Illustration (d).—This illustration does not compel, but certainly permits, the Court to make a presumption as to the continuance of the state of things. 29 Ind. Cas. 694=20 C W. N. 48. Proof of the existence at a particular time of a fact of a continuous nature gives rise to rebut[illegible] within logical limits
that it existed at a subsequent time or has [illegible]
within which the inference of continuance [illegible]
be relevant must obviously vary with each [illegible]
the inference steadily diminishes in force wi[illegible]
ate to the quality of permanence belonging [illegible]
perhaps [illegible]
it will be [illegible] whose existence at a [illegible]
once esta[illegible] ...ist as long as such facts usually exist.
36 C. L. J. 336.

Illustration (e).—There is a well known maxim of law *omnia presumuntur rite esse acta*; this is an inference of reasonable probability arising out of the experience of mankind The law assumes that any act done in public or any formal act privately done will be performed in due form by the person authorised to do it. (*Powell, Ev* 391), see also A. I. R. 1934 Rang. 207; 39 C. W. N. 89= A. I. R 1934 P. C 217; 36 C W. N. 345; A. I. R. 1933 All. 218; A. I R. 1933 Sind 331; 58 C 598; A. I. R. 1933 Pat 104; 13 P. L. T. 737; 36 C W. N. 242; 60 C. 303; 56 C. L. J. 583, A. I. R 1933 Lah. 159. Under this section, it is presumed, that official acts have been regularly performed. "Regularly performed" means performed with due regard to form and procedure. 1921 Pat. 343=63 Ind. Cas. 226, 66 Ind. Cas. 471; 68 Ind. Cas. 740; 4 Lah. L. J. 448.

Illustration (f).—The posting of a letter, if proved and if the same is not returned by the Dead Letter Office raises the presumption that it must have reached the addressee. 45 M. L. J. 817.

Illustration (g). The presumption indicated in this illustration arising from non-production of evidence cannot displace the contrary inference supported by

adequate evidence. 63 Ind. Cas. 740 (P. C.). In other cases the Court can draw such inference from non-production 62 Ind. Cas. 697. Non-production of the

in existence. A I R. 1933 P C. 87=37 C. W. N. 657=64 M. L. J. 413 (P. C.); see also A. I. R. 1933 All 474; A. I. R 1933 Cal. 461; A. I. R. 1933 Mad, 451; A. I. R. 1933 Nag 379, 61 C 711, A I. R 1934 Rang. 139=150 Ind Cas. 898, 15 Lah. 407; A. I. R 1934 All 71; 1 O. W. N. 880. Prosecution is not under obligation to call all relevant evidence, and presumption under S. 114 illus. (g) need not be raised simply because prosecution does not call certain witnesses. A. I. R. 1933 Cal 600=37 C. W. N 1098

Illustration (i).—This illustration only refers to presumptions that may be raised. It does not follow that such presumption would shift the onus of proof. 18 M. L. T 94. Under the clause (i) it is open to the Court to presume that if a document creating an obligation is in the hands of the obligor, the obligation is discharged. But in raising such a presumption the Court has to take into regard any facts or circumstances indicating that it might have been stolen. The burden shifts as the evidence is developed and when both the parties produce their evidence, the question on whom the initial onus lay ceases to be of much importance. 25 O. C. 125

Presumption of death.—Where among some relations the evidence on the question who died first is quite evenly balanced, the Court is entitled to say the probabilities are in favour of the younger man surviving the elder. 1922 Bom. 347.

CHAPTER VIII.

Estoppel.

Estoppel.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppels.—Most admissions can be withdrawn; the fact that they were made remains, but the party who made them can be heard to explain that he made them rashly and carelessly, or under an honest misapprehension, or even that he knew what he said to be false. But an admission or statement may be made in so conclusive a manner or under such special circumstances that the law will not

The rules of evidence forbid to alle
with his previous representation,
to the policy of the law. Neither h
evidence to contradict it. This
"An estoppel is where a man is con
truth"—*Powell, Ev.* 446.

Kind of estoppels.—According to English law estoppels are of three kinds: (1) By Record; (2) By Deed; and (3) By Conduct.

Estoppels by record.—The judgment of a competent Court is an instance of this kind of estoppel. *Vide* ss. 40-44 *supra.*

Estoppels by Deed.—Where a man has entered into a solemn engagement by deed under his hand and seal as to certain facts, neither he or any one claiming through or under him is permitted to deny the facts. (*Phipson, Ev.* 606.)

Estoppels by conduct—Estoppels by conduct, or, as they are still sometimes called, estoppels by matter *in pais*, were anciently acts of notoriety not less solemn and formal than the execution of a deed, such as living of seisin, entry, acceptance of an estate, and the like and whether a party had or had not concurred in an act of this sort was deemed a matter which there could be no difficulty in ascertaining and then the legal consequences followed. The doctrine has, however, in modern times

act or statement by a party which it
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or conduct wilfully causes another to
im to act on that
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time"—*Phipson*,
117. The object
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or otherwise to disclose the truth, may often have the same effect." No actual
estoppel. It is quite enough that
he belief that he asserts no claim to
also 34 A. 398 (P. C): 77 Ind. Cas.
tra 35 C. 904. There is no peculiar
from that of England. The law is
46 A. 728 = 51 I. A. 326 P.C. Where
parties there is no scope for the
such belief" must have altered his
the representation, 25 Bom. L. R.
to 94 because the law of estoppel is
lure only. 72 Ind. Cas. 931. A person
who knows the truth can hardly be allowed to rely upon an estoppel arising from a false representation (1923) M. W. N. 225: 30 C. 539=5 Bom. L. R. 421 (P. C) Where A and B convey property to C. making him believe that they are sole owners of the property and C acting on that representation takes the property for consideration, A and B are estopped from asserting the title of a third person to the property of D who was aware of the title of that third person. 36 C. L. J. 78 Where a statement is relied upon as an estoppel it must be proved that the statement caused a change of position of the parties setting up the estoppel. 62 Ind. Cas. 809; 57 Ind. Cas. 263: 4 C. L. J. 323; 7 A. 511. The rule of estoppel is a rule of evidence and ought to be pleaded with sufficient clearness. 61 Ind. Cas, 807. The meaning of this section is that no declaration, act or omission will amount to an estoppel unless it has caused the person whom it concerns to alter his position; and to do this he must both believe the facts stated or suggested by it and act upon such belief. 7 A 878 (F. B.); see also 7 C. L. R. 481.

Estoppel—Point—of law.—There is no estoppel by reason of misrepresentation on a point of law and a transaction which is invalid can be declared to be such at the instance of either party alone. 82 Ind. Cas 126. Representation on a matter of law *i. e.*, as to the validity of an adoption creates no estoppel. 70 Ind. Cas. 653. An admission on a point of law is not an admission of a "thing" so as to make the admission a matter of estoppel within the meaning of this section. 21 A. 285.

Person—A minor is not estopped from setting up his minority. As judicially interpreted the Contract Act makes contracts entered into by a minor void and the Court should not be compelled to pronounce them valid by the provisions contained in the Evidence Act. It is not apparently the case that the word "person" in the section does not include a 'minor" or 'certified lunatic" or other person under a disability to contract owing to imbecility of judgment But it might be held that such a person could not be held to have intentionally caused anything. When the law of contract declared that an infant would not be liable upon a contract or in the Statute of Fraud in connection with a contract he cannot be made liable on the same contract by means of an estoppel: in other words there can be no doubt about the general law that the principle of estoppel which is a provision of adjective law cannot be invoked to defeat the plain provision of a Statue 71 Ind Cas. 161; 20 C W. N. 418; see also 9 A L. J. 105; 8 A. L. J. 1058; *contra.* 31 A 21; 33 C. 126; 15 C W N. 239; 21 B 198; 19 Bom. L. R. 561; 23 Bom. L R. 975. In the latter case it was also held that "person" includes minor or lunatic. See also 25 C. 316 : 1 Lah. 389; 60 Ind Cas. 267. Section 115 does not apply to minors. The term "person" in that section applies to one who is of full age and competent to enter into a contract. 26 C. 381=3 C. W. N. 468.

Declaration, act or omission—The estoppel under this section may arise by reason either of a declaration, an act or an omission, but in either case there must be an intention on the part of person against whom the estoppel operates to cause or permit a belief in the mind of another. In the case of a mere omission no such intention can well be imputed unless the true facts are known to the person whose omission is in question, but where there is a deliberate declaration or act causing or permitting such belief and inducing another to act upon it, it must be presumed that such declaration or act was intended to have its ordinary and natural effect upon the mind and actions of the other party. 67 Ind Cas 744 Estoppel is purely a personal bar operating against the person whose conduct constitutes it, and against his privies and representatives. 14 C 401; 17 M. 473.

Adoption—Where an adoption made by a Hindu widow is invalid for want of permission from her deceased husband she is not estopped from repudiating or denying it by the circumstance of her having for sometime treated it as effective. *An adoption ab initio invalid may be raised to the level of a valid adoption on the* ground of estoppel only when, by a course of conduct long continued on the part of the family which has purported to affiliate him his situation in his original family has been so altered that it would be impossible to restore him in it. 18 M.
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also 15 M. 486=2 M. L. J. 114

116. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when licence was given.

Estoppel of tenant; and of licence of person in possession.

Principle—*In Cook v. Laxley*, 5 T. R. 5; *Cockle Case*, 52 *Lord Kenyon, C. J.* laid down. Conforming to the uniform decisions in all the cases upon this subject] I ruled at the trial, and continue to entertain the same opinion, that in an action for use and occupation it would not be permitted to a tenant, who occupies land by the license of another, to call upon the other to show the title under which he let the land. This is not a mere technical rule, but is founded on public convenience and policy."

Scope—The estoppel of a tenant is one of the most noticeable instances estoppel by conduct. (*Cockle Cas.* 53). By this section, a tenant is only preclu

"during the continuance of the tenancy" from denying that the landlord had 'at the beginning of the tenancy' a title to the property, the subject of the tenancy. The words of the section leave it open to the tenant to show that his landlord's title has subsequently expired. 11 Bom. L. R. 1093; see also A. I. R. 1934 Pat. 555=15 P. L. T. 519; A. I. R. 1934 Lah. 445; A. I. R. 1931 Oudh 177; A. I. R. 1933 P. C. 29=37 C. W. N. 265; 36 Bom. L. R. 1074; 59 C. L. J. 66=A. I. R. 1934 Cal. 499. Rule of estoppel does not bar defence of ouster by a title paramount. A. I. R. 1931

. J. 355=A. I. R. 1934 Mad. 197. Under-
r in execution of decree for ejectment
1132 So the tenant is not estopped from
ired since the tenancy commenced or
the lease. There is no inconsistency
roving such matters. (*Cockle Cas.* 53).
section to deny that the licensor had a title to the possession of the property at the time when the license was given to him to enter though there was no relationship of licensor and licensee subsisting between
2. This section does not debar
the title of his landlord has
The words "at the beginning of the tenancy" in this section can only apply to cases, in which the tenants are put into possession of the tenancy by the person to whom they have atterned and not to a case where the tenants have previously been in possession. 11 C 319; 73 Ind. Cas. 450. A tenant is not precluded by an admission of tenancy from showing that the nature of the tenancy asserted by him to the knowledge of the landlord has been, for a period prescribed by the Limitation Act, *protanto* adverse to the right to evict either at will or on notice given. 27 B 515=5 Bom. L. R. 374. Persons not claiming possession of land under the tenant are not estopped from denying the title of the lessor. 44 A. 671=20 A. L. J. 615.

Estoppel of acceptor of bill of exchange, bailee or licensee.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1)—The exceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2)—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

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clusive admission as against the acceptor, of the existence of the drawer and the genuineness of his signature, and of his capacity to draw (*Sanderson* v. *Callman*, 1842, 11 L. J. C. P. 270); and if the bill be payable to the order of the drawer, of his capacity to endorse, (*Taylar* v. *Croker*, 1803, 4 Esp. 127); and if it be drawn by procuration of the authority of the agent to be drawn in the name of the principal (*Taylor*, 595). This section is in accordance with English Law. Sections 115, 116 and 117 of the Evidence Act are not exhaustive as regards the doctrine of estoppel by agreement. 10 C. W. N. 747=33 C. 915.

Forged endorsement—Nobody is entitled to any thing though a forged negotiable instrument, in as much as the forged endorsement is a nullity in itself. 36 C. 229.

CHAPTER IX.

OF WITNESSES.

Who may testify.

118. All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational

answer to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Comment—Evidence must be given by legally competent witnesses, The normal man is competent and presumed to be so. The law of competency is therefore practically the law of incompetency, consisting of rules of exclusion.

Formerly there were several grounds of exclusion of witnesses. the chief being (1) incompetency from interest and (2) incompetency from mental incapacity. On ids and wives , or otherwise abolished this to affect credibility only —*Cockle Cas.* 243.

Scope.—Under this section all persons are competent to testify unless the Court considers that they are incapable of giving evidence or understanding the questions put to them by reason of tender years, extreme old age, disease whether of body or mind or an atic, if he is capable of understanding swers is a competent witness. The a condition precedent to the administration to him of an oath or affirmation, and is a question distinct from that of his credibility when he has been sworn or has affirmed. In determining the question of competency the Court under this section, has not to knowledge of the in, in the best understanding, or done on a age can satisfy *een Empress* v. is a competent witness in both civil and criminal cases, except a child who does not understand the nature of an oath. *Powell, Ev.* 197. But in India, where a person is competent to testify according to the provisions of this section, but is unable owing to his tender age, to comprehend the nature of an oath or affirmation, s 13 of the Oaths Act relieves the Court of the necessity of administering an oath or affirmation to him; and the evidence of such a person recorded without oath or affirmation may be admitted. 10 O. C 337=7 Cr L. J. 89. See also 16 B. 359; 14 B L. R. 204 (F. B); 11 C. P. L R. Cr. 16; *contra*, 16 M. 105; 10 A. 207; 11 A. 183 Children are most un- 6. Evidence of eye- wife. A. I. R. 1933 ble witness should him. A. I. R. 1933 Rang. 162. A witness should not be excluded simply because he is a weaver or tailor. A. I. R. 1932 Lah. 12=32 P. L. R. 877.

How to ascertain competency.—By this section, the Legislature has not prescribed an inflexible rule of universal application to the effect that, before a child of tender years is questioned, the Court must by preliminary examination test his capacity to understand and to give rational answers and must form an opinion as to the competency of the witness before the actual examination commences 18 C. W. N. 147=41 C. 406; *contra*, 11 C. W. N. 51; 20 Bom. L R. 365. Understanding questions put and giving reasonable and comprehensive answers determine competency of witness. A. I. R. 1932 Cal. 723=36 C. W. N. 1152=60 C. 179. Accused though competent to testify is incompetent witness. A. I. R. 1932 Rang. 190 (F. B.).

Tender years—There is no fixed period of legal discretion under which an infant is an incompetent witness. The rule by which an infant under seven years of n conclusively not to have of evidence (*Perpetteson.* . and the question is entl- the Court will ascertain its own satisfaction by examining the infant as regards his understanding. (*P*

Ev. 215). A judge can act on the evidence of a child of tender years if he is impressed by its intelligence and demeanour and the evidence given bears no marks of tutorage. 6 Lah. L. J. 474. A Court should ascertain first of all by some simple questions whether a child is competent to understand and answer questions. 1923 p 91.

Idiot—An idiot ... fore is by law presu ... able of giving evide ... onus of proving the unsoundness of mind of any person tendered as a witness rests on those who dispute his sanity. *Harrod* v. *Harrod*, 8 K. & J. at. p. 9, *Powell, Ev.* 213.

Deaf and Dumb.—Deaf and dumb persons were formerly regarded as idiots, and therefore incompetent to testify but the modern doctrine is that if they are of sufficient understanding they may give evidence either by signs or through an interpreter or in writing. (*Powell, Ev.* 214).

Explanation.—A lunatic is one ... or other accident has lost the use ... intelligence continues, the lunatic is ... restored during a lucid interval. Moreover, the disability does not extend to cases of monomania as to some immaterial matter, nor where the hallucination permits the witness to understand the nature of the duty which is expected from him (*R.* v. *Hill*, 2 Den. 254). But where a person is tendered as a witness who is believed to be suffering from monomania, a preliminary inquiry as to his capacity to give evidence must be instituted and he himself must be examined. (*Powell, Ev.* 214).

Dumb witness.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Deaf and Dumb witnesses. The same rule would, no doubt, be applicable in the case of deaf and dumb witnesses, who might be communicated with by special signs, provided the Court was satisfied as to the reality and accuracy of such communication. Competence to understand the question put to him and to give rational answers is under section 118 the one essential qualification for a witness. Deaf and dumb persons were formerly excluded as witnesses on the presumption of their idiocy. It is now ascertained how groundless this presumption is. (*Cunningham*, 349). If the witness can write, it is safer practice to receive his testimony in this form, than through the medium of signs. *Morrison* v. *Lennard*, 3 C. and P. 127. Persons deaf and dumb from birth were formerly excluded and classed with idiots. Education has now opened their ears, and metaphorically loosened their tongues. (*Norton, Ev.* 306).

Deemed to be oral evidence—Presumably to exclude the effect of putting in *writing* which would give the opposite side the right of a reply. (*Norton, Ev.* 336).

Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial

120. In all civil proceedings the p... wife of any ... witnesses. I... person, the ... respectively, ...

L. R. (1912) H. C. 305. In civil cases there appear to have been no exceptions at all.

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rties
to the suit shall be competent witnesses. 49 C. 345. Mother is competent witness to prove legitimacy. A. I. R. 1932 Mad. 44=55 M. 292.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other *matters which occurred in his presence whilst he was so acting.*

Judges and Magistrates.

Illustrations.

(*a*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer question as to this, except upon the special order of a superior Court.

(*b*) A is accused before the Court of Session of having given false evidence before B, a Magistrate B cannot be asked what A said except upon the special order of the superior Court.

(*c*) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Session Judge. B may be examined as to what occurred.

Scope—The privilege given by this section is the privilege of the witness, *i. e.* of the Judge of whom the question is asked. If he waives that privilege, it does not lie in the mouth of any other person to assert it. 3 A. 573=A. W N. 1881, 37. But Judicial officers are not exempted from giving evidence upon matters which they saw, when sitting as Judges unless they arrive at such knowledge by virtue of an investigation which they were making as Judges. 2 Weir 777.

122. No person who is or has been married shall be compelled to disclose any communications made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Communications during marriage.

Principle.—This enactment rests on the
such testimony would have a powerful tend
promote domestic broils, and to weaken if n
fidence, which is the most endearing solace
confined to cases where the communicatio
strictly confidential character, but the seal
tions of whatever nature which pass between
banks, (1842) 11 L. J. C. P. 267 It extends also to cases in which the interests of strangers are solely involved, as well as to those in which the husband or wife is a party on the record, It is, however, limited to such matters as has been communicated during marriage. (*Taylor* § 909 *A*).

It is incumbent upon the Court to ask the party, against whom the evidence is to be given, whether he or she would consent to the evidence being given, and not to admit it unless such consent is given. 244 P. L R. 1913; see also 218 P. L. R. 1913; 40 C. 891; 10 P R. 1914 Cr.; 1923 Lah 40 This prohibition extends to all communications of whatever character. A I. R 1933 Bom. 158=35 Bom. L. R. 174.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the Officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Evidence as to affairs of State.

of S

L.

the production may, on special grounds, be refused, is bound to produce them on receiving a summons to that effect. 2 Weir 781. Statements made by witnesses as in the course of a departmental

were subsequen ly put upon their

4 0

from 27 B. 189). Privilege sh

157=143 Ind. Cas 685 Co

A. I. R. 1931 P. C. 254=35 C

upon concern for public intere

ther. *Ibid* Privilege cannot

also A. I. R. 1933 Lah. 157.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Official communications.

Scope.—This section follows the English law and makes the public officer the judge as to whether a communication made to him in official confidence should or should not be disclosed. If he thinks that the public interest would suffer by such disclosure, he is entitled to refuse to disclose the communication. The mere fact that the publication of the communication

will not justify a refusal to disclose it. 7 C.

28 S. L. R. 274 The words "communicat

special degree of secrecy and no pledge o

include generally all matters communicated

mance of duties. The words have the same meaning as "professional confidence" used in s. 126. In English law the privilege as to production of public documents before Courts of law extends even to those which pass from hand to hand, in a public office, in the usual course of business with no special mark of

lege rests is that it would be

26 Ind. Cas. 723. An officer's

licy is final. It is not compe-

chives of the State in order to

as. 225. But a custom officer

cannot claim a privilege as to the admission, made to him by the Inspector although what took place between the two superintendents might probably be privileged 22 C. W N. 451. No objection can be taken in appeal. 44 M. L. J. 132. A Court should decide whether the document is privileged or not. 44 A. 360=20 A. L. J. 140.

125. No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Information as to commission of offences.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.

1887.

offence" in this

(24 How. St.

Tr. 808) has universally obtained, on account of its importance to the public for the detection of crimes that those persons, who are the channels by means of which the detection is made, should not be unnecessarily disclosed. Rat. Un. Cr. C. 937=Cr. Rg. 47 of 1897. *Eyre, C. J.* observed: "It is perfectly right that all opportunities should be given to discuss the truth of the evidence given against the prisoner, but there is a rule, which has universally obtained on account of its importance to the public for the detection of crimes, that those persons who are the channels by means of which that detection is made, should not be unnecessarily disclosed; if it can be made to appear that really and truly it is necessary for the investigation of the truth of the case that the name of person should be disclosed. I should be very unwilling to stop it; but it does not appear to me that it is within the ordinary course to do it, or that there is any necessity for it in this particular case". Even when no objection is taken in the Court, the Court should exclude such evidence. 46 C 898. Statements made in the course of judicial proceedings are absolutely privileged, but police report does not enjoy such absolute privilege 22 A. L. J. 597=46 A. 471.

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in

Professional communication.

as such barrister, pleader, o state the contents or con- quainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any [illegal] purpose;

(2) any fact observed by any barrister, [pleader], attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, [pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations

(*a*) A, a client, says to B, an attorney—"I have committed forgery and I wish you to defend me."

guilty is not a criminal purpose. this

'I wish to obtain possession of property st you to sue." therance of a criminal purpose, is not

, retains B, an atorney, to defend him. s that an entry has been made in A's id to have been embezzled, which entry his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings it is not protected from diclosure,

Legislative changes.—The words within brackets have been added by Act 18 of 1872.

Principle—The rule is established for the protection of the client, not of the lawyer; and is founded on the impossibility of conducting legal business without professional assistance and on the necessity, in order to render that assistance effectual or securing full and unreserved intercourse between the two. The privilege may be waived by the client, therefore, but not by the adviser. (*Phipson, Ev.* 170),

Scope.—A legal adviser,
be allowed without the expres
tary communications made or ol
The law in India relating to
a client is the same as in England, and in interpreting this section, the High Court may rightly refer to English cases. The use of the word "disclose" in this section
must be of a confidential character
not everything that the solicitor learns
that is privileged from disclosure. It
coun de
his professional advice. The solicitor claims
must then state the name of the person for
one client mentions the name of another client in a communication made to the solicitor in the course and for the purpose of professional employment by him, and the latter consults the solicitor afterwards on business relating to his own affairs, then unless the name of the latter is communicated to the solicitor confidentially for the purpose of being advised by him, on the express understanding that it should not be communicated to the rest of the world, the solicitor is bound to disclose the name of the client. A solicitor is not at liberty to disclose the matter of employment, without
publicity not merely the details
rview between a solicitor and his
company makes a statement to him in the course and for the purpose of his professional employment the solicitor is not privileged form disclosing the name of the person making the statement, unless the name was made the subject of a
ilated by or on behalf of
his client that it was not
Iso L. B. R. (1894-1909)
358 26 Bom L. R. 887
applying to all persons
"pleader" as defined in s. 4 (a) of Cr. P Code
25 C. 736=2 C. W. N. 484. The consent
given on each occasion when a communication of the kind described is sought to be made admissible in evidence A. W. N. 1890. 172. The communication must be of a confidential or private nature 3 B. 91. The communication must be made to him in the course and for the purpose of his employment as a pleader. 4 Bom L. R. 460 : 5 Bom. L. R. 122. A Court has no power to order the production of a document which is privileged. 7 Bom. L. R. 709 See also 16 C W. N 742. Doctor is not entitled to withhold evidence. A. I. R 1933 All. 56=55 A. 134=1933 A. L. J. 14. Communication must be confidential. 136 Ind. Cas. 476=58 C. 1379=A.I.R. 1932 Cal. 148. Communications to pleader before relationship of pleader and client is created are not privileged. A. I. R. 1932 Cal 148=58 C. 1379.
are only privileged. A. I. R. 1933 Sind 47=34
of client during communication does not d
formal retainer, nor payment of fees is n
ship of solicitor or client ; it is enough if the solicitor is consulted in any way in his professional character. The sale, purchase and conveyance of estates or negotiations for a loan are within the scope. According to English law communications in furtherance of a fraud or crime are not protected. But according to this section communications made in furtherance of any illegal purpose are not protected. (*Vide Phipson, Ev.* 172). Trade secrets communicated to a vakil in course of his professional advice are also protected. 16 A. L. J. 987. This section extends to facts observed by a lawyer in the course of hisemployment. A. I. R. 1934 Lah. 269=1934 Cr. C. 507.

Section 126 to apply to interpreters etc.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants or barristers, pleaders, attorneys and vakils.

n is made to a pleader's clerk he is not at
26 C. 53=2 C. W. N. 649 ; U. B. R. (1897-
ions must have been confidentially made for
vledge confidentially obtained solely in conse-
v. *Irvin*, 4 Ex. D. 491 *O' Shea* v. *Wood*,
1861, P. 286)—*Phipson, Ev.* 172.

Privilege not waived by volunteering evidence.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, [pleader], attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

Legislative changes.—The word within brackets has been inserted by Act 18 of 1872.

: either expressly or
e privileged matter
d to the residue ; or,
t such privilege can-
l law, a party, who
ed to have waived his pri-
ional adviser of any relevant
such privilege, be bound to
party's giving such evidence
e barrister, etc, as a witness
by the barrister, etc. only
...ion he would be bound not
to disclose ; and by giving evidence he does not expose himself to be questioned about professional communications except so far as is necessary to explain his evidence (*Cunningham, Ev.* 361).

Confidential communications with legal advisers.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he

be compelled to
necessary to be k
but no others.

Reason for the rule—Under the old law, (Act II of 1855), section 22, a party to a suit, who offered himself as witness, was bound to produce any confidential writing or correspondence that had passed between himself and his legal adviser The reason for this rule is not very clear ; and the present section abrogates it so far that such correspondence need be produced only if it is necessary to explain the witness's evidence. It will be observed that the doubts which were at one time felt in the English Courts as to whether the protection extends to communication made by a client to his solicitor before any dispute has arisen, cannot arise under this section (*Taylor*, 924), The English law at present is identical with the rule here laid down ; *Minet* v. *Morgan* L. R 8 Ch. App 361—(*Cunningham, Ev.* 362).

Scope.—Statements of witness recorded for the special purpose of being shown to a legal adviser with a view to ascertaining whether it is a good case for the Court to decide are privileged. 43 Ind Cas 71.

Production of title deeds of witness not a party.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

the reason to be the mischief which might ensue from an erroneous decision of th Judge as to the nature of the documents. (*Phipson, Ev.* 179) A person who not a party to the action cannot be compelled to produce his title deeds, or

documents referring to his title to any property. If one person wants to see another person's title deeds or documents he should himself bring an action against such person for discovery. *Cockle Cas.* 303 ; *Pickering* v. *Wayes*, 1 L. J. K. B. (O. S) 110. A mortgagee also cannot be compelled to produce his security including title deeds deposited with him except on payment of his principal and interest. *Chichester* v. *Marquis of Donegall*, L. R. 5 Ch. 502. A witness is not bound to produce any document which he swears will tend to criminate him. *Roe* v. *New York Press*, 75 L. J. 31.

Production of documents which another person, having possession could refuse to produce.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

Notes.—By section 65, secondary evidence can be given when a document is in the custody of a person who is legally bound to produce it and who refuses to do so. In the case, therefore, of a document protected under this or the preceding section, secondary evidence of its contents could not be given. (*Cun. Ev* 366).

Witness not excused from answering on ground that answer will criminate.

132. A witness shall not be excused from answering any questions as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind :

Proviso.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

English law.—*No man is bound to criminate himself* ; *nemo tenetur seipsum rodere.* Hence, a witness, whether a party to a suit or not, cannot be compelled to answer any question, whether put *viva voce* or in the form of a written interrogatory, the answer to which may expose, or tend to expose him, to a criminal charge, penalty or forfeiture of any kind. If the witness, after claiming privilege, is compelled to answer, his evidence will not be admitted against him at a subsequent trial for the criminal offence. (*R.* v. *Garbet* 1 Den. 236). *Powell, Ev.* 222.

Scope—It seems that the Indian legislature while departing from the rule laid down in English cases have accepted the principle laid down in *R.* v. *Garbet* cited above. A witness has been made compellable to answer relevant questions but he is given the protection mentioned in that case. Where a person is charged with an offence with which he is alleged to have incriminated himself in his deposition in a case, the fact that he was the person who gave the deposition should be proved. 2 Weir 794.

[illegible] terms deal with [illegible]ss but only with [illegible] questions should [illegible]ion, that a witness [illegible] him as to matters which are irrelevant. The terms of section 132, especially when read with the rest of the Act, lead to the conclusion that the protection is only afforded to answers to which a witness has objected or has [illegible] give. 3 M. 271 : 12 B 440 ; 23 B. 213. Taking [illegible]y the Court is not equivalent to asking a question [illegible] purview of the proviso to s. 132 and therefore suc[illegible]ved against the person giving it in a criminal trial 16 C. W. N. 500=15 C. L. J. 399.

Claim of privilege—A witness must claim the benefit of the protection afforded by the section before he makes statement in respect of which a question is subsequently raised. 40 A. 271=16 A. L. J 201.

Proviso—A statement containing defamatory matter against another, made by a witness in a judicial proceeding, is a privileged statement under this section of

the Act, for which such witness could not be proceeded against criminally. If the statement were false, he might be prosecuted for giving false evidence 3 O. C. 80; 18 A. L. J. 940. Where, on the evidence given by certain witnesses in a murder case to the effect that they assisted the accused in concealing the dead body after murder, they were prosecuted under s. 201, the only evidence being that depositions, *held*, that their conviction was not illegal, as they had omitted to object perhaps owing to the want of legal advice, to answer the question, on the ground that the answers would criminate them. 2 Weir 712. The proviso does not apply to voluntary statements. 32 C. W. N 756; 9 C. W. N 911; Rat. Un. Cr C. 360; 12 B. 440, 16 A. 88; 43 A. 92; 37 C 878. If a person makes a statement voluntarily without any compulsion, it may be, if relevant, used against him in his trial on a criminal charge. 21 C. 392; 32 C. 756 A defamatory statement which is not protected under s. 499 is punishable. 14 C. L. J 31; 33 A. 163; 22 A. 685; 23 C 563; 11 M. 477; 17 B. 127; 15 C. 264; 10 A 425; 23 C 867; *contra*, 11 B L.R. 321; 22 A. 234; 9 C. W. N. 911 Witness is not protected unless he has objected to answering questions. A I. R 1933 Oudh 370 = 1933 Cr. C. 1048

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Accomplice.

Scope—So long-established a rule of practice as that which makes it prudent as a general rule, to require corroboration of accomplice, cannot, without great danger

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are parts of one subject and both are found in most of the general judgments; and neither section is to be ignored in the exercise of judicial discretion The illustration (*b*) to s. 114 is the rule, and when it is departed from, the Court should show or it

lices cannot be treated on precisely the same footing, and no general rule can be laid down. 26 B. 193 = 7 Bom. L R 694

Corroboration—It is generally unsafe to convict an accused person on the testimony of his accomplices,

necting the accused with the

technically come within the c

of each case will affect its

point. 33 C. 649 = 10 C. W

evidence of an accomplice be

under exceptional circumstances, interfere in cases where the rule has not been adhered to 17 Ind. Cas. 19 = 13 Cr L J. 767, 11 Bom L. R 858; 7 A. 160; 27 P. R 1869. By the law both of India and England, the evidence of an accomplice is admissible, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice 14 B 115

The corroboration required of the testimony of an accomplice should go to some circumstances affecting the identity of the accused as participating in the transaction Such corroboration ought to be that which is derived from unimpeachable or independent evidence as distinguished from that derived from the earlier statements of the same accomplice or the statements of other accomplices. 6 Bom L R. 481. The amount of criminality is a matter for consideration, and when a person is only an accomplice by implication or in a secondary sense, this evidence does not require the same amount of corroboration as that of a person who is an actual perpetrator with the principal offender In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice the Court must exercise careful discrimination and consider all the surrounding circumstances in order to arrive at a conclusion whether the facts deposed to by the person alleged

to be an accomplice are borne out by those circumstances, or whether the circumstances are of such a nature that the evidence purporting to be given by an alleged accomplice are supported in essential and material particulars by evidence *aliundi* as to the facts deposed to by that accomplice. 28. C. 339 =5 C. W. N. 517; see also 15 Bom. L R. 288; Rat. Un. Cr. C. 750; 2 Weir 809 N. To justify the Court in setting aside the conviction, it is necessary to show not only that there is no corroboration, but that the Judge, taking all the evidence together was wrong in acting on it. 16 C. W. N. 669 It is the invariable practice of Courts to require corroboration by an independent witness of so much of the evidence of an accomplice as goes to identify the accused person as the offender. 4 Bom. L. R. 401. See also 2 C. W. N. 55; 57 P. L. R. 1902=5 P. R. 1922 Cr; L. B. R. (1872-1892) 322; 6 L. B. R. 4; 25 M. 143, 5 C. P. L R. 1 Cr. Prior to the Evidence Act, the rule, not of law, but of practice was that a conviction could not be based on the unsupported evidence of an accomplice. 31 P. R. 1866 Cr.; 125 P. R. 1866 Cr.; 124 P. R. 1866 Cr.; 27 P. R. 1867 Cr.; Rat. Un. Cr. C. 844; 74 P. R. 1860 Cr.; 11 P. R. 1867 Cr.; U. B. R. (1892-96) Vol 1. 103; 2 C. W. N. 55; 5 P. R. 1902; 17 P. L. R. 1912; 10 B. 319; 24 Ind. Cas. 158, U. B. R. (1897-19 1) Vol 173; 9 A. 528; Rat. Un. Cr. C. 101; L. B. R. (1872-1892) 54; 8 A. 306; 33 C. 1353; 8 A. 120; 1 M. 394; 1 L. B. R. 29; 16 P. R 1896 Cr. *Contra*, 1 M. 394; 35 M. 247; 35 M. 397; 1 M. L. J. 397. (F. B.).

There must be independent corroboration with respect to the identification of the persons whom accomplices charge and with respect to the facts they state. 21 P. R. 1866 Cr.; 1 P. R. 1868 Cr.; Rat. Un. Cr. 840; see also 1 M. L. J. 367; Rat. Un. Cr. C. 844; 18 C. W. N 850; 11 B. H. C. A C. 196; see also 7 Bom. L. R. 969 for nature of corroboration. Where there is nothing in the case outside the confession of a co-accused the accused must be acquitted. 48 A. 409=A. I. R. 1926 All. 377.

Cases.—Where corroboration was found necessary, *vide* 4 P. R. 1903 Cr; 23 C. 361; 21 C. 328; 2 Lah. 296; 73 Ind. Cas. 506; 1923 Lah. 153; 9 O. & A. L. R. 947; 1923 Lah. 666; 1923 Lah. 335; 69 Ind. Cas. 462; 4 Pat. L. T. 381; 5 Lah 429.

for three reasons; (1) r to shift the guilt from e and consequently as oath, and (3) because expectation of an im- whom he acted crimi- There is often danger that, for the purpose of saving themselves rather than stating the truth, the accomplices of saving themselves rather than stating the truth, the accomplices will make out a stronger case against the prisoner and more favourable to themselves than the real truth will warrant. 14 B. 115.

Accomplice.—The term accomplice signifies a guilty associate in a crime or, nal act that he could be jointly 271. Where an accomplice is ir 809 N. A spy is not an accom- harged with an offence by the is not an acomplice. 7 W. R. Cr 44; L B. R. (1893-1900), 467. A person offering bribe to the police is an accomplice. 14 B. 115; 14 B. 331; 26 B. 193; 26 M. 1; 2 C. W. N. 672. Witnesses to payment of bribes are not accomplices, unless they co-operate in the payment of the bribes. 33 C. 649; 27 C. 144. No man ought to be treated as an accomplice on mere suspicion. 11 Bom. L. R. 1153. Involuntary payment of bribe does not make one an accomplice. 27 C. 925. See also 31 C. L. J. 30.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

Number of witnesses.

Scope.—The general rule is that the Court can act upon the uncorroborated evidence of single witness if satisfied with such evidence (*Cockle Cas.* 141). But there are certain cases in which the legislature has required as a matter of law that credence should not be given to the unsupported testimony of one witness (*Powell, Ev.*

upon a given point as distinguished in the discretion of the Court which ...tracted by evidence or examination merely cumulative in their nature. (*Best*, 570). It is not open to the trying Magistrate to put any arbitrary limit on the witnesses whose evidence the defence desires to adduce. 22 C. W. N. 408. Evidence of even one witness is sufficient for conviction on charge of perjury. 53 A. 598=A. I. R. 1931 All. 362 ; see also A. I. R. 1931 All. 736=52 A. 1005=1931 P. L. J. 32 ; 11 Mys. L. J. 468.

CHAPTER X.

Of the Examination of Witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Order of production and examination of witnesses.

Scope.—This section deals with the law which regulates the order in which witnesses are to be examined. Before the Court can proceed to hear a case, it is obviously necessary to determine which party shall begin, or upon whom the burden of proof on the whole case lies. The general rule is that the party who alleges any matter in issue must prove it. This would be simple enough if there were only one fact in issue, but there may be several facts in issue, the burden of proof of some being on one party and of others on the other party. The position is practically this, ... against whom judgment would be ...*le Cas* 123). The party who would ... to begin. In criminal cases there ... are invariably made by the prosecution and as such the prosecution has got the right to begin.

Civil Cases.—In civil ... dant admits the facts allege ... or on some additional facts ... entitled to any part of the relief which he seeks, in which case the defendant has the right to ...

... (Order XVIII, rule 2). Where there are several defendants some of whom support the case of the plaintiff, wholly or in part and others oppose him, the rule is that those who support the case of the plaintiff, must address the Court and adduce his evidence in the first place and then the other defendants must address the Court and adduce evidence. 32 *B.* 599

Criminal Cases.—In criminal cases, the prosecution has the right to begin. The witnesses for prosecution are examined in the first place. There are different kinds of procedure in different kinds of cases. Chapter XX of the Criminal Procedure Code prescribes the procedure to be adopted in summons cases. Chapter XXI lays down the procedure to be adopted in warrant cases and Chapter XXII prescribes the procedure to be followed in summary trial. In all of them the prosecution witnesses are to be examined in the first place.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

Judge to decide as to admissibility of evidence.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(*b*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c*) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved before the property is identified.

(*d*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C and D is proved, or may require proof of B, C and D before permitting proof of A.

improper admission of evidence is extremely detrimental to the interest of the parties. So the Judge is authorised to decide the question of relevency of a fact by asking questions to the party tendering evidence.

Para 2—This para. should be read with s. 104. It often happens that an agent, for instance, to carry a message and bring back an answer, or do some other act, is put into the box before the agency or authority is proved. Thereupon an objection is taken by the opposing counsel that the evidence is not receivable, because the agency, etc. is not proved. An undertaking prove the agency will be forthcoming at a late If the proof of agency should break down, the agent is expunged from the Judge's notes. interrupt the witness in his story, and call another witness in the middle of his examination, to prove agency. It is to meet such a state of things that this clause is provided. (*Norton, Ev.* 319).

Para 3—Illustrations (*c*) and (d) explain the meaning of the para. Where the relevency of one fact depends upon another fact, which is not proved before the Court, the Court may either permit the first-mentioned fact to be proved before the second fact or may require the party to adduce evidence in the first place for proving the second fact.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination in-chief.

Cross-examination

The examination of a witness by the adverse party shall be called his cross examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re examination.

Rs examination.

Notes—As soon as the witness has taken the oath or affirmed, he will be examined by the counsel for the party who called him as a witness ; this is examination-in-chief. Next, he
Lastly, he may be re-ex
Unfinished testimony, if
rejected. A. I R. 1933 Lah. 561=34 P. L. R. 719. Right of cross-examination is granted, to the party adverse to the party calling the witness A. I. R. 1932 Lah. 103=33 Cr. L. J. 97=33 P. L. R. 891.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross examined, then (if the party calling him so desires) re-examined.

Order of examinations.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination ; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Direction of re-examination.

Principle.—*Long forensic experience has evolved a body of rules of practice* which undoubtedly tend to elicit the truth, and thus materially assist the tribunal in ascertaining the weight which should be attached to the evidence of any witness. (*Powell, Ev* 525).

Examination—The first rule which regulates examination-in-chief is this :—

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Court, whether it
tells in favour of the prisoner or not, and not unduly press for conviction. (*Powell, Ev.* 526).

"We may here observe that it is to an affirmative proof that an examination-in-chief is mainly addressed , and the proof is that of the issue to which the party producing the witness has by his pleadings in the cause challenged his antagonist ; and this consists in avoidance of all diverting, and collateral matters. The expression affirmative is used in the sense of something which is affirmed on either one side or the other. In this view a negation by a defendant of the case of the plai
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had averred their existence. It would extend even to inferences, in the nature of opinion, which the witness might himself draw from the facts before him. Testifying as to facts, the witness can of course only do so according to the extent of his knowledge or recollection He is not required to speak with such certainty as to exclude all doubt from his mind. "If" says *Professor Greenleaf*, "the fact is impressed on his memory but his recollection does not rise to positive assurance, it is still

admissible, to be weighed by the jury ; but if the impression is not derived from the recollection of the fact, and is so slight as to render it probable that it may have been derived from others, or may have been some unwarrantable deduction of witness's own mind, it will be rejected." To use the expression of *Mr. Taylor* in modification of the passage—"He may express it as it lies in his memory." (*Goodeve, Ev.* 195). But there are exceptions to the rule, though they will be found limited to the instances where the nature of the case does not admit of more positive evidence. Thus, in a question of identity between persons and hand-writing, a witness is allowed to speak upon belief. So, in one requiring for aid in its determination, the experience to be derived from science, art or trade ; witness skilled, in such matters or as they are termed experts are admitted to give, as evidence, the results of their own craft bearing on the issue, as in questions of foreign law or usage skilled or competent persons are admitted
dence, what that law or usage
breach of promise of marriage t
towards each other may be proved upon belief *Ibid* p. 196.

In the *case of experts* ;—which is the other exception to the rule requiring witnesses to depose on actual
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the cause of disease or death—the probable consequences of wounds,—or the propriety or effect of any given course of medical treatment. So in the case of ancient handwriting, antiquarians have been allowed to fix its date by conjecture. (*Goodeve, Ev. 203*).

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which affect his veracity, such as, whether he has been convicted of a crime ; whether he is a relative, or intimate friend, or under any special obligation, to the party he is not iden-
tified or connected with him in interest ;
with the adverse party ; whether his me
particular transaction ; and whether he
But irrelevant questions which neither co
nation-in-chief, nor impeach the credit of
examination. Where a question asked in
it will not be excluded if the cross-examiner undertakes to show that it is really material. (*Powell, Ev. pp.* 531-533).

"Cross-examination, though very powerful, is also a very dangerous engine. It is a double-edged weapon, and as often wounds him who wields it, as him at whom it is aimed. To wield it to advantage requires great practice and natural tact. In the hands of the raw and inexperienced advocate, we frequently see it to do more injury than good to the cause. Yet it is this branch of forensic practice that the youthful advocate is most eager to display. The old and weary pleader remembers that the witness is hostile to him, and is, perhaps, on the watch to inflict damage on his cause Every question is likely to give such a witness an opportunity of clenching the nail he has driven before if it is not of starting new matter, which the examination-in-chief may not have elicited, but which may be further pursued in re-examination. There-

fore unless there is some very good ground for believing that the witness can be broken down, or convicted of falsehood, it is rarely good policy to submit him to a severe cross-examination. Sometimes a cross-examination is little more than affectation, in order that the pleader may not seem to let the witness go without ques tion, as if

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able evidence it may be prudent for the adverse party not to cross-examine; for in such a case, he may be so doing, instead of weakening the evidence, merely strengthen and confirm it. So too, he will generally not cross-examine a witness, whose evidence he admits, or which possibly cannot injure his case. Reckless cross-examination, moreover, often lets in evidence which beforo was not admissible. (*Powell*, *Ev.* 531).

How long right to cross examin

tion and its concomitant privileges of

cross-examination of the witness follow

concluded and the attendence of the witness is either dispensed with from the stand or the re-examination if any, has begun. After that it is a privilege only, resting in favour of the Court. The ordinary rules of procedure made to the end that the truth may be elicited by the expeditious as well as orderly examination of witnesses require that parties must exhaust their cross-examination of a witness when entered into. (*Burr Jones*, *Ev.* § 825).

Re-examination.—The object of re-examination is to explain the meaning of the expressions used by the witness in cross-examination. The re-examination is subject to the same rules as the examination-in-chief. No leading questions may be asked for the witness is the witness of the party who examined him in chief. As to the introduction of new matter, see the end of the section. The Court always may and often does, examine a witness at the close of the examination. The Court is not bound by the same rules as counsels as to leading questions etc. See *post*, section 142. The Court may put what questions it pleases, and in what form it pleases, see *post* section 145, and most usefully so, especially where the examination has not been scientifically or skilfully conducted (*Norton*, *Ev.* 323).

Cases—An accused person must be allowed to cross-examine witnesses called by another co-accused for his defence, if the case of the latter is adverse to that of the former. 21 C. 401; but see 12 W. R. Cr. 75 which was decided before this Act. But the view expressed in 21 C. 401 is in accordance with English law: *vide Lord* v. *Colvin*, (1855.) 24 L. J. Ch. 517; *R.* v. *Burdett*, Dears C. C 431. One defendant can also cross-examine another co-defendant's witness if his defence is adverse. 1 M H. C. R. 546. In criminal cases an accused has the right to cross-examine the prosecution witness when the charge is framed. If he waives that right he cannot afterwards claim that right. 7 C. 28=8 C. L. R. 328; 20 C. 469: *contra*, 2 A. 253; 32 C. 292 In the latter two cases it was laid down that the right continued till the end of the case. After a refusal of an application by the accused for re-summoning the prosecution witnesses for further cross examination, the accused applied for summoning some of those witnesses as witnesses on his behalf. On their appearing the Magistrate refused to allow the accused to cross-examine them, and the accused thereupon declined to examine them as his witnesses *Held*, that the refusal by the Court to allow the accused to cross-examine the witnesses, who were in attendance in Court, has resulted in a mistrial of the case. 1 C. W. N. 19; see also 5 C. W. N. 447.

No hard-and-fast rule can be laid down as to the right of counsel to demand in cross-examination that a witness should repeat the story which he has told in the examination-in chief. 85 P. L. R 1914=22 Ind. Cas. 724. A Magistrate is not entitled to refuse the application of the accused, made after the framing of the charge, to recall the witnesses for the prosecution, on the ground that they have already being cross-examined before the framing of the charge, in the understanding that they would not be required for further cross-examination after the charge. 6 C. W. N. 424, see 41 C. 299. Where a witness has not been asked a single question in examination-in-chief there even the opposite party has the right to cross-examine. 6 B. L. R. App. 88. In a criminal case it must be proved that

either the accused cross-examined the prosecution witnesses or was given sufficient opportunity to cross-examine them. 19 B. 759; see also 9 W. R. 587; 6 W. R. 181; 12 C. L. J. 124. (F. B.). Generally it is not the province of the Court to examine witnesses and as a rule the Court should leave the witnesses to the pleaders to be dealt with as it provided for in this section. 11 O. L. J. 333=82 Ind. Cas. 154 (1).

It certainly implied by this section that a party must have had an opportunity to cross-examine and does not mean that merely a right to cross-examine a witness without an opportunity being offered for cross-examination is sufficient compliance with the requirements of the law. 73 Ind. Cas. 339=24 Cr. L. J 595.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as witness.

Cross-examination of person called to produce a document

Scope.—It is the rule that, if a competent witness is intentionally called and sworn for the purpose of giving evidence, the right of cross-examination exists, although no testimony is actually given *Rex* v. *Brooke*, 2 Stark. 472; *Phillips* v. *Eamer*, 1 Esp. 355; 6 B. L. R. App 88. But there are certain exceptions to the general rule. The rule does, however, extend to a witness who is simply subpœnaed to produce a document to be identified or proved by another witness. In such a case he need not be sworn. *Summers* v. *Moreley*, 2 Cromp. and M. 477; *Perry* v. *Gibson*, 1 A. & E. 48; *Rush* v. *Smith*, 1 C. M. and R. 64; *Davis* v. *Dole*, 4 Car and P. 335; *Griffith* v. *Ricketts*, 7 Hare. 300; *Reed* v. *James*, 1 Stark. 1327.

Until he is called as a witness—*i. e*, until he is sworn intentionally. If he is unnecessarily sworn he cannot be cross-examined. (*Rush* v. *Smith*, 1 C. M. and R. 94); nor where he is sworn by mistake. (*Wood* v. *Mackinson*, 2 M. and R. 273; *Clifford* v. *Hunter*, 3 C. and P. 16; *Reed* v. *James*, 1 Stark. 1327).

140. Witnesses to character may be cross-examined and re-examined.

Witnesses to character.

Scope.—According to English practice it is not usual to cross-examine, except under special circumstances, witnesses called merely to speak to the character of a prisoner, but there is no rule which forbids the cross-examination of such witnesses (*Woodroffe*, 863) The Indian rule is also the same as the use of the word "may" suggests that it is not the usual practice, though the right exists. (*Norton, Ev.* 325).

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

Leading questions.

Leading questions—"A question" says *Bentham*, "is a leading one, when it indicates to the witness the real or supposed fact which the examiner expects and desires to have confirmed by the answer. Is not your name so and so? Do you reside in such a place? Are you not in the service of such and such a person? Have you not lived so many years with him? It is clear that under this form every sort of information may be conveyed to the witness in disguise. It may be used to prepare him to give the desired anwers to the questions about to be put to him; the examiner, while he pretends ignorance and is asking for information, is in reality giving instead of receiving it." A leading question is one which suggests to the witness the answer desired, or which embodying a material fact, admits of a conclusive answer by a simple negative or affirmative. (*Taylor*, § 1404). "It is very clear that a question is leading which suggests to the witness the [illegible] is mouth words which he is to [illegible] suggesting an answer or a [illegible] declared that a question is [illegible] and admits of answer by [illegible] a question which may be [illegible] such questions which in no way suggest the answer desired and to which there is no real objection. On the other hand, leading questions are by no means limited to those which may be answered by yes or no (*Burr Jones*, § 816).

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

When they must not be asked

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

Principle.—There is no rule of evidence more familiar to the practitioner than the one which forbids leading questions on direct examination of witness. Leading questions may be used to prepare a witness to give the desired answers to the questions about to be put to him ; the examiner, where he pretends ignorance as in asking for
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Scope.—Counsel when examining-in-chief must not ask leading questions. But the rule is not an inflexible one. In the first place, a question is not objectionable as leading when it is only introductory to what is material, or relates to matter as to *which there is no dispute. In most cases it is necessary to prove a certain number* position of the matters, leading er side, and such But when the real issue is approached the witness must be asked such questions merely as "what did you see ?" "What did you hear ?" "What happened next ?" This rule prevents at least in some measure, the possibility of any collusion between a prosecutor,

Judge, who has general discretion over the conduct of all *viva voce* examinations. For instance, when a question from its nature cannot be put except in a leading form, the Judge may allow it to be put. (*Powell*, *Ev* 528)

If objected to, etc.—If the objection is not taken at the time, the answer will be taken in the Judge's notes, and it will be too late to object to the evidence afterwards on the score of its having been elicited by a leading question. Sometimes the Judge himself will interfere to permit a leading question or a series of leading questions being put ; but it is the duty of the opposing counsel to take objection ; and it is only through want of practical skill that the omission occurs At the same time, it is to be observed that if evidence is elicited by a series of leading questions unobjected to, the effect of the evidence so obtained is very much weakened, for it can scarcely escape the notice of the Judge. It is advisable, therefore, for a counsel, examining-in-chief or on re-examination, not to put leading questions except of course as to those points on which they are expressly permitted by the Act. (*Norton*, *Ev* 325)

143. Leading quesions may be asked in cross-examination

When they may be asked.

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counsel to say, whatever might be most favourable to him. This privilege of submitting leading questions on cross-examination is always, therefore, subject to the sound discretion of the Court. (*Burr Jones*, § 824). Thus, on Hardy's trial, a witness for the prosecution, on evincing a favourable disposition towards the prisoner, was asked a leading question by the counsel for the defence, but *Buller J.* refused to allow the question to be put, saying ;—"You may lead a witness upon a cross-examination to bring him directly to the point as to the answer ; but you can not go the length of putting into the witness's mouth the very words which he is to echo back again". *R. v. H*
Aldersc
nation

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitled the party who called the witness to give secondary evidence of it.

Evidence as to matters in writing.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him". This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter

Scope.—This section merely points out the manner in which the provisions of sections 91 and 92 as to the exclusion of oral by documentary evidence may be enforced by the parties to the suit. "Documents which in the opinion of the Court ought to be produced" would of course include the cases referred to in section 91, where the law requires a matter to be reduced to the form of a document. (*Cunningham, Ev.* 376).

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved ; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Cross examination as to previous statements in writing

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tent for the Judge, at any time during the trial, to require the production ... writing for his inspection, and he may thereupon make such use of it for the purpose of the trial as he may think fit. Criminal Pro. Act, 1865 (28 Vict. C 18) s. 5 ; see also *Darby* v *Ouseley*, 1 H. & N. 1.

Principle. ... witness may be ... his previous written statements

from principle of justice due to the witness ; for as the direct tendency of the ...

is to impeach his veracity by contradicting his present statement with that supposed to have been made by him to some other person, common justice requires that before his credit is attacked, he should have an opportunity of declaring whether he ever made such statement to that person, and of explaining in the re-examination, the nature and particulars of the conversation, under what circumstances it was made, from what motives, and with what designs. The former account, given by him in conversation, may have been partially heard, or misunderstood, or partly forgotten, or intentionally misrepresented." *Philips and Arnold*, vol. II. p 505.

Scope.—There is hardly any more familiar practice in judicial procedure than that of impeaching witnesses by proof of their former statements which are inconsistent with their present testimony. Since such an attempt is a direct attack upon the tesimony of the witness, and may result in serious consequences, it is important that the practice should be so regular that the witness may have full oppotunity to admit, deny or explain any statement which is thus assailed. It has frequently been declared that, in order to designate sufficiently the circumstances of the statement, the witness should be asked as to the time, place and person involved in the contradiction Although the conduct of the witness as to matters having no connection with the case the witness on cross-examination, but concerning his actions, if they ie witness stand. (*Burr Jones* § 845)

Cases—19 A. 399 ; 7 A. 862 ; 8 W. R. 87 , 4 B. 576 ; 31 C. 142 ; 13 W. R. Cr. 18 ; 15 W. R Cr. 23 ; 11 B H. C R 120 ; 17 Bom. L R. 590 ; 45 M. L. J. 438.

Police diaries—Police diaries are not evidence. But they can be used for contradicing the persons who made the diary 19 A 390 ; see also 19 Bom. L R. 510.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referreed to, be asked any questions which tend—

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

g his character, although the answer to indirectly to criminate him or might expose him to a penalty or forfeiture.

English law—This section differs from the law of England where a witness is still not bound to answer questions which criminate, or have a tendency to criminate

the witness, but it is submitted that the Court has the right to exercise a discretion in such cases, and to refuse to compel such questions to be answered when the truth or the matter suggested would not in the opinion of the Court affect the credibility of the witness as to the matter to which he is required to testify." *Steph. Ev. Art.* 129.)

Scope—This does not mean that a witness may be asked questions on irrelevant topics for the mere purpose of contradicting him or of proving contradictory statements. For, unless they come within the exceptions mentioned in s 153, his answers to questions tending to shake his credit cannot be contradicted ; nor by section 155, can former contradictory statements be proved, unless that part of the witners's evidence, which they counteract, was itself liable to be contradicted. (*Cun Ev.* 378). Judge should control cross-examination A. I. R 1933 Lah. 667= 34 Cr. L. J. 606. In cross-examination it is usual to allow some latitude. A. I. R, 1932 Cal. 474=59 C 1361=55 C. L J. 439

Cases—1923 Cal 315 (2)

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, provisions of section 131 shall apply thereto.

Scope—The word "such," it is presumed, refers to the last clause of the preceding section, and not to the word "any," in earlier part of that section. None but relevant questions can be asked in cross-examination *ante*. section 138, clause 2. But relevancy is of two-fold character; it may be directly relevant in its bearing on elucidating or disproving the very merits of the points in issue. In such a case, the witness is not prote [illegible]
nate him. For section [illegible]
of relevancy which is [illegible]
which is always relevant: because if he is dishonest no faith can be put in the story he utters. Where questions are put to a witness, not for proving or disproving the point in issue but exclusively and merely to show what is the character of the witness the Court is to decide whether the question is to be answered or not. (*Norton, Ev* 328)

Court to decide when question shall be asked and when witness compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2) such questions are improper if the imputation which they convey relates to matters so remote in t[illegible]
the imputation would not affect, [illegible]
the Court as to the credibility of [illegible]

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Scope.—Witnesses may be cross-examined as to specific facts though not pertinent to the issue which tend to discredit the witness or impeach his moral character and credit, when there is reason to believe that such examination will tend to the ends of justice; but that a cross-examination of this character ought not to be allowed when it seems unjust to the witness and uncalled for by the circumstances of the case. According to this view it may as a rule be safely left to the trial Judge to control the inquiry; while it is proper for him to permit questions tending to disgrace the witness, if in an important way this affects his credibility, yet, on the other [illegible]

the trial Judge is to be exercised in view of the evidence already introduced and the testimony of the witness in the direct examination and all the circumstances of the case. It often happens that the appearance bias and deportment of an adverse witness—his prevarication, reluctance, or apparent bias, the intrinsic improbability of his testimony or its incongruity with known facts—make it the plain duty of the Court to permit searching and disparaging inquiries on matters irrelevant to the issue, for the purpose of aiding the jury in a collateral inquiry as to his credit (*Burr Jones*, § 834).

Question not to be asked without reasonable grounds.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

Illustrations.

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(*b*) A pleader is informed by a person in Court that an important witness is a dakait ; the informant, on being questioned by the pleader gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(*c*) A witness ... ndom whether he is a dakait.

(*d*) A witness ... ned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait

Reasonable Ground—"The illustrations show that the "reasonable grounds" which justify such questions, may be much slighter than could justify a man in making an imputation under other circumstances A barrister who is told a discrediting fact by an attorney or vakil, or a pleader who hears such a fact from a person who appears to know about it, is justified in so far assuming its truth as to question a witness about it ; and he may even do so with no other justification than the witness's unsatisfactory replies." (*Cun Ev.* 381).

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Procedure of Court in case of question being asked without reasonable grounds.

Object—"The object of these sections is to lay down, in the most distinct manner the duty of counsel of all grades in examining witnesses with a view to

... sound by all honourable advocates and by the public." *Proceedings of the Legislative Council of India pp. 237-238 of the Supplementary to the Gazette of India of the 30th March, 1872*

... eflects not on the witness but

... Ind. Cas. 509.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Indecent and scandalous questions.

Object—It is recognised that from the necessity of the case, the method ... must depend very largely upon ... especially true where the object is to test ... If the cross-examination is proceeding ... test the accuracy and credibility of the witness, or is being needlessly protracted, or is being conducted in a manner which is unfair to the witness or if it is inconsistent with the decorum of the Court-room the Court is not bound to wait for objections from counsel, but may interfere of its own motion. Every Court having original jurisdiction is authorized to reject evidence on immaterial issues, though objected to by neither party ; and if it were otherwise, it would be a reproach to the administration of justice. (*Burr Jones*, § 817) "Justice to the witness demands that all the Courts to which he appeals for ... the circums- ... If the range ... ounsel, it will be no reparation of the wrong to the witness that the judgment, in which he has

no concern, may be afterwards reverted by appellate tribunal." *Great Western Trunkpike Road Co* v. *Loomis*, 32 N. Y. 127. It is almost needless to add that cross-examination on matters either directly in issue or directly relevant to the issue is a matter of right, and its exclusion is error. It is only after right has been substantially and fairly exercised that the allowance of cross-examination becomes discretionary with the trial Court.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Questions intended to insult or annoy.

Object.—Counsels have no right to inject into the cross-examination unfair insinuations upon the conduct of the witness or comments upon his testimony, and Court should not wait for objections before interfering with such a practice. It goes without saying that questions tending to insult, abuse or intimidate the witness should not be permitted, and the Court is not required to wait for objections to such mode of interrogation. (*Burr Jones*, § 843.)

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exclusion of evidence to contradict answers to questions testing veracity.

Exception (1)—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction

(2).—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a*) A claim against a underwriter is resisted on the ground of fraud.

The claimant is asked whether in a former transaction, he had not made a

situation for dis-

He denies it.

which affects his

... day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d*) A is asked whether his family has not had a bloodfeud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Object. ... rials being spun out to an unreasonabl ... the rule, which restricts the right as reg ... , is that it is an object of great importance to confine the attention of the jury to the specific issues as much as possible. (6 B. H. C. R. 93 (96).

... that, but for such a rule a suit might easily digress into various collateral issues and become practically interminable. The exceptions refer to two matters which are

easily susceptible of proof and strike at the very root of the witness's trustworthiness. It is very important to know whether a witness has been previously convicted, or has received a bribe from the other party On the other hand no great expenditure of time need be involved in ascertaining how the facts stand. (*Cun. Ev.* 383). Where a fact which has a direct bearing on the issue is denied by a witness, it may, of course, be proved *aliunde*. See illustration (c), but where the fact inquired after is collateral to the issue—as, for instance, the character of a witness,—counsel must be content with the answer which the witness choose to give him. If he denies the imputation, the answer is conclusive for purpose of the suit. See illustrations (a) (b) ; the matter cannot be carried further at the trial except the two cases provided for by this section. The only redress which a party has is to charge the witness with perjury and try him for it. To this rule there are however, two exceptions *Exception* (*1*)—When a witness denies that he has been previously convicted, his previous conviction may always be put in to refute him (*Norton, Ev.* 332) *Exception* (*2*)—This exception is based on *Attorney General* v. *Hitchock*, 16 L. J. Ex 259. Whether this can be done has been the subject of much doubt in England, In the above case. *Pollock C B.* observed . "A witness may be asked how he stands affected towards one of the parties ; and if his relation towards them is such as to prejudice his mind, and fill
of a similar kind, and if he denies t
of his mind and feelings." In t
of a bribe by a witness to another,
tends to show that he is not impartial."

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Question by party to his own witness

Principle—As a party cannot put leading questions to his own witness it is apparent that injustice would ensue if the party, discovering that he had been mistaken in his witness is that the witness was adverse and was against and not for him, were tied down by any hard-and-fast rule as to leading the witness. The rule is correctly indicated by *Greenleaf* when he says · "But the weight of authority seems in favour of admitting the party to show that the evidence has taken him by surprise, and is contrary to the examination of the witness preparatory to the trial, or to what the party had reason to believe he would testify, or that the witness has recently been brought under the influence of the other party and has deceived the party calling him. For, it is said, that this course is necessary for his protection
anger of its being regarded
cases than it is where the
Hence a well recognized
mits leading questions to
for any reason, may be
itness is attempting to promote the interest of the adverse party, or if the witness is in fact the adverse party, the Court will be justified in permitting the direct examination to take the character of a cross-examination : and in the latter case, leading question may be asked as a matter of right. (*Burr Jones, Ev.* § 817).

In its discretion.—The unwillingness or other state of mind of the witness is to be decided by the Judge from his demeanour upon the stand and from such facts in evidence as may show that the witness, because of his relationship to a party, in the cause or for other reason, has some bias against the one calling him or some disinclination to testify. (*Burr Jones, Ev. S.* 817).

discredit his own witness, or
oluntarily placed the witness
happens that a witness proves
then this rule and the rule
in chief are relaxed and the
stions in examination-in-chief
and may attack the character and dispute the veracity of the witness in fact, to cross-examine him. The foundation of the rule against leading questions is that the witness is favourable to the party who calls him ; and when that is not the case the reason for insisting on the rule is gone. The mere fact that a party is driv

to call his opponent as his witness does not entitle him to treat that opponent as hostile and cross-examine him without the leave of the Court. *Scot* v. *Sampson*, Judge is satisfied that a witness is hostile to the application, declare him so to be; and this will ... eat him as a witness called by the other side. *Price* v. *Manning*, 42 Ch D. 372—*Powell Ev.* 529. As regards Indian cases *vide*, 6 C. W. N. 513 P. C; 28 C. 594. It is not open to the prosecution in a criminal trial to cross-examine their own witness unless the Court declares him to be a hostile ... to questions would not be admissible in ... such questions. 1 Pat. 758=4 Pat. L. T. ... purposes of this section between attesting ... ll and other witnesses whom a party cites of ... N. 860. A witness who is unfavourable is ... tness is one who from the manner in which he ... is not desirous of telling the truth to the Court. 34 C. L. J. 107. Court's discretion in allowing cross-examination by party calling him should not be exercised unless necessity appears from examination-in-chief. A. ... M. L. W. 233. Court can allow ... ring to be hostile. A. I. R. 1933 ... 1933 Nag. 384; 14 P. L. T. ... ; A. I. R. 1933 Pat. 533; 38 ... ostile his evidence cannot be considered worthless A. I R. 1933 Pat. 517=14 P. L T. 494.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:—

Impeaching credit of witness.

(1) by the evidence of persons who testify, that they from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has "accepted" the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations

... said that he had not

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Legislative changes—The word "accepted" in para (2) was substituted for the original word "had" by Act 18 of 1872.

... there are three ... (1) By giving ... of persons who ... he made the ... hat they know ... judgment should be founded; particular facts cannot be gone into: (2) By showing that he has on former occasions made

misconduct
not stand
a witness
...e evidence
for the party whom he favours, or that he has used expressions of animosity and revenge towards the party against whom he bears testimony. (*Best*, s 644). The Indian Legislators have accepted the first two instances *in toto* and has taken only that part of misconduct which consists in taking bribery. It is always admissible to prove that a witness has taken bribe to give his evidence *Langhorn's Case*, 3 How St. Tr. 446 ; *Attorney General* v *Hitchcock*, 1 Ex. Ch. 91=11 Jur. 478. The last instance is also taken from the English law but it is only applicable in a case of rape and when the prosecutrix is examined. S. 162 (1) Cr. Pro. Code has effect of modifying s. 155 14 P. L. T. 543=1933 Cr. C 1350=A. I R 1933 Pat. 589.

Clause (1)—Here the enquiry must be limited to what they knew of his general character, on which alone the judgment should be founded ; particular facts cannot be gone into. So a party may call witnesses to swear that, in their opinion, based on their knowledge of the general character and reputation of a witness on the other side, he is not to be believed on his oath. *R* v *Brown*, L. R. 1 C. C. R. 70 ; *Cockle Case*, 283.

Clause (2)—In *Att. General* v. *Hitchcock*, 1 Ex. 91=11 Jur. 498 *Pollock, C. B.* observed : "The offer of a bribe is a matter of no importance, if it be not accepted, for it does not disparage the party to whom it is offered" In the same case *Alderson B.* observed . The offer of a bribe by witness to another, or the fact of a bribe having been accepted by him, tends to show that he is not impartial." This is an example of misconduct connected with the proceeding

Clause (3)—See illustrations (*a*) and (*b*). Any statement, verbal as well as written, may be used for this purpose. The witness must be specifically asked whether he made such and such statements, before he can be contradicted by them through another witness Where the statement is in writing , see *ante*, section 146, proviso (4). *Norton, Ev.* 334. As regards statements made before police *vide* 11 B. H. C. 120, 11 B 657 ; 15 A. 25 ; 27 A. 469 ; 17 P. R 1886 Cr ; 16 C. 610 ; 33 C. 1023 ; 17 A. 57 , A. W. N 1905, 64 , 16 C 612 N ; 20 C 642 ; 8 C. W. N 218 ; 26 M. 191. The expression "which is liable to be contradicted" means "which is relevant to the issue." 17 C 344 ; 14 L W 612. Evidence of some of prosecution witnesses can be used to impeach credit of eye-witnesses 134 Ind. Cas 583=A. I R. 1931 Lah. 189 Clause(3) does not render provisions of Evidence Act, s 145 nugatory. A. I. R, 1931 Lah 38= 32 Cr L J 522=32 P. L. R. 259 How previous statement should be used for contradicting a witness, *vide* A. I R. 1934 All 226=147 Ind. Cas. 591

Clause (4)—"On indictments for rape or an attempt to commit that crime, while evidence of general bad character is admissible to show that the prosecutrix, like any other witness, ought not to be believed upon her oath, proof that she is a reputed prostitute would go far towards raising an inference that she has yielded willingly to the prisoner's embraces General evidence, therefore, of this kind will be received, though the woman be not called as a witness, and though, if called she be not asked, on cross-examination, any questions tending to impeach her character for chastity". *Norton, Ev.* 334 , see also 36 C W N. 356=33 Cr L J. 604=A I. R. 1932 Cal. 523=138 Ind Cas 373.

Questions tending to corroborate evidence of relevant fact, admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Corroborative evidence.—This is additional evidence proving similar facts or facts calculated to produce the same results as facts already given in evidence. The distinction between corroborative and cumulative evidence is clearly marked, although, ordinarily, corroborative evidence, simply means fortifying evidence, whether it is evidence of different or similar facts, or additional evidence of the same fact. (*Burr Jones*, § *86*).

. . . .

circumstances in the first instance from the witness himself, and for this the section makes provision (*Cun. Ev. 388*). This section, in effect, declares evidence of certain facts to be admissibe ; and if it had not been inserted the Judge would have had to determine the relevancy of these facts by reference to secs. 7 and 11, and he might perhaps have been influenced by the practice in England which has been against the admission of such evidence. (*Markby, Ev 109, 110*).

Former statements of witness may be proved to corroborate later testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved.

English law.—Facts which tend to render more probable the truth of a witness's testimony on any material point are admissible in corroboration thereof, although otherwise irrelevant to the issue and although happening before the date of the fact to be corroborated. *Wilcox* v. *Godfrey*, 26 L. T. N. S 481. But facts which are not more consistent with the truth of such testimony than the reverse, are inadmissible Whenever the testimony of a witness is challenged by cross-examination or otherwise, corroboration thereof is allowable ; and in certain cases no verdict can be obtained without the production of such evidence. The corroborative facts and evidence must, however, be proved otherwise than by the testimony of the witness to be corroborated Formerly the fact that a witness had made a previous statement similar to his testimony in Court could always be proved to confirm his testimony. But afterwards the rule was changed, and such evidence is now generally inadmissible either on direct examination to confirm his testimony, or on re-examination to re-establish his credit when impeached by proof of a previous contradictory statement. (*Phipson, Ev 149*).

Scope.—Before corroborative evidence is admissible, the evidence sought to be corroboroted must have been given. 5 C W. N. XVI. A statement made by a witness to a chief constable can only be used under this section to corroborate the evidence of the first witness at the trial. Rat. Un. Cr. C. 508. The force of any corroboration by means of previous consistent statements must evidently depend upon the truth of the proposition that he who is consistent desires to be believed. 11 B. H C. 197 (198). Recital of boundary is not admissible under s. 13 but is admissible under s. 157, if executant is called and deposes as to boundary or under s. 32 if he be dead A. I. R. 1933 Pat. 636 ; see also 146 Ind. Cas. 192. Statement made to investigating police officer cannot be used either by prosecution or defence for corroborating testimony given at trial. A. I. R. 1933 Pat. 589 = 14 P. L. T. 543

Cases.—16 C. W N. 145 ; 25 M. 210 ; 10 C 970 ; 4 Bom. L R. 434 ; 7 W. R. Cr. 31 , 12 W. R. Cr. 3 ; 1 C. W N. 712 ; 6 M L. T. 17 ; 12 C. W. N. 266 ; 3 L. B. R. 250 , 3 P R 1904 Cr ; 26 Ind. Cas 138 ; 22 B. 596 ; 13 C. W. N. 197 ; 4 Ind. Cas. 700 ; 13 O. C 7 , 1923 Mad. 20 ; 5 Lah 324 ; 82 Ind. Cas. 142 , 19 A. L. J. 947 ; 61 Ind. Cas. 650 , 6 Pat. L. J. 241 ; (1919) M. W. N. 199 ; 55 Ind. Cas. 273 ; 58 Ind. Cas. 344 ; 49 C. 732 = 26 C. W. N. 589 ; 45 M. 766 ; 2 Pat. L. J. 42 ; A. I. R. 1934 Sind 100.

158. Whenever any statement, relevant under section 32 or 33, is proved all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

Scope—The statements admissible under sections, 32 and 33 are exceptional cases and the evidence is only admitted from the improbability or great inconvenience of producing the authors of the statements It is only just therefore that all the same safeguards for veracity should be provided as if the authors of the statement were themselves before the Court, and subjected to oath and cross-examination. (*Norton, Ev.* 336). The present section has the effect of exposing any such statement, when admitted, so far as may be, to all the scrutiny and giving the advantage of all the corroboration, which it would have had on the cross-examination of the person making it. (*Cun. Ev* 390). See also 23 C 441

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

Refreshing memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Principle—It is a well-settled and undisputed principle of the law of evidence fer to written or printed memo- of refreshing, assisting or stimu- facts about which he is testi- only to such facts as are within nt is not violated by permitting icated. Bentham has pointed [illegible] witness on the stand to consult notes or memoranda for the purpose of refreshing his memory. "On the one hand, what you want is a prompt and unpremeditated answer. If you allow him time to consult notes, you partly lose the advantage of that lively and quick examination which does not give bad faith time to think." On the other hand, if this assistance is denied, the witness will often be unable to give accurate and complete testimony, and the whole object of the judicial investigation may be defeated It is universally ces is by no means equal, and it to memoranda or writings in that very few witnesses would [illegible] quantities and sums, after a lapse of a few years, if they were not permitted to refer to papers and writings which they knew to be correct at the time they were made. (*Burr Jones, Ev* $ 874)

Cases.—The writing need not be admissible in evidence 8 C 211; 9 C 455. 16 C. P. L. R. 122. Under this section it is not necessary that the witness must be sure that what was reduced to writing by him is a correct record It is enough if, on reading it, the true facts are recalled to his memory If the words are not recalled to his memory, the notes may be admitted under s. 160, if he is sure that the facts were correctly recorded in the notes. 5 M. L. T. 393=9 Cr L J. 456=32 M. 384. A. I. R. 1933 Pat. 306=12 Pat. 359, A I R. 1932 Lah. 7=32 Cr. L. J. 1172; A I. R. 1933 Sind 220=34 Cr. L. J. 848. A police officer is not bound to refresh his memory. 8 C. 154 (156); see also 8 C. 745.

Statement made to Police.—9 C. 455 ; 16 C. 610 ; 20 C. 242 ; 31 C. 1050 ; A. I. R. 1933 Lah. 987 ; 11 B. 657 ; 4 S. L. R 38 Cr. But see 10 C. W. N. 890.

Special diary.—19 A. 390 (F. B.) ; 19 A. L. J. 76.

Collection papers.—40 C. 248 ; 11 C. 407.

Postmortem examination report.—9 C. 455.

Dying declaration.—8 C. 211.

Other Cases.—27 Ind Cas 985.

Zaminder's register.—5 C. 353.

Confession.—16 C. P. L. R. 122 ; A. I. R. 1933 Lah. 716.

Arbitration proceeding.—5 C. W. N. XVI.

Horoscope.—12 Mys. L. J. 133

Testimony to facts stated in document mentioned in section 159.

160. A witness may also testify to facts mentioned in any such documents as is mentioned in section 159, although he has no specific recollection of the facts themselves he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Scope.—In order that a document may be used to refresh the memory, it is by no means necessary that the witness after having seen it should have any independent rocollection of the facts mentioned therein or connected therewith, but it will suffice if he remembers that he has seen the paper before, and that when he saw it. ... instances them- ... e of recognising ... randum or swear to the particular fact in question Thus where an agent who made a parol lease, and entered a memorandum of the terms in a book, states that he has no memory of the transaction save from the book, though on reading the entry he entertains no doubt that the fact really happened, it was held sufficient. *Taylor* § 1412. See 49 C 573. The question whether secondary evidence has in any given case been rightly admitted is one which is proper to be decided by the Judge of first instance and is treated as depending very much on his discretion. 5 Bom. L. R. 708=28 B. 94 ; see also A I. R. 1931 Mad. 430=54 M. 678=60 M. L. J. 404.

Right of adverse party as to writing used to refresh memory.

161. Any writing refered to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it : such party may, if he pleases, cross-examine the witness thereupon.

Scope.—In all cases where documents are used for the purpose of refreshing the memory of a witness, it is usual and reasonable,—and if the witness has no independent recollection of the fact, it is necessary that they should be produced at the trial and that the opposite counsel should have an opportunity of inspecting ... tion, he may have the benefit of the ... Neither is the adverse party bound ... e, merely because he has looked at ... ntries as have been previously referred to ; but if he goes further than this, and asks questions as to the parts of the memorandum, it seems, that he thereby makes it his own evidence. (*Taylor* § 1413). The grounds upon which the opposite party is permitted to inspect a writing are ; (1) to secure the full benefit of the witness's recollection as to the whole of the facts ; (2) to check the use of improper documents and (3) to compare his oral testimony with the written statement. The opposite party may look at the writing to see what kind of writing it is in order to check the use of improper document ; but it is doubtful whether he is entitled, except for his particular purpose, to question the witness as to other and independent matters contained in the same series of writing. 8 C. 739 (745).

Case—2 Ind. Cas, 535.

Production of documents.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it s necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence; and, if the interpreter disobeys such direction he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Comment.—If a person served with a *subpoena* admits that he has the documents required with him, he must produce them He may be asked what documents he has with him, and he is bound to answer the question without being sworn, and produce the documents. The witness produces the document to the Court and not to the parties, and the Court decides whether it is to be used or not. The wit
If a wit
refuses
If he d
writing
sible, bu...
be compelled by *subpoena* to produce documents which are not in his possession or under his control. (*Powell*, *Ev.* 653). If the Court decides to summon a Government official for the production of certain documents, it should only do so after careful consideration and once the summons had been issued production should ordinarily be insisted on if the party who obtained the summons so desires. 45 Ind. Cas 898.

Giving, as evidence, of document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Scope.—The production of papers upon notice does not make them evidence
...
to compel its production, and see its contents, and then make use of it or not,
...
trial has begun 72 Ind Cas. 459

Cases—57 Ind. Cas. 973

Using, as evidence, of document production of which was refused on notice

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refusses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Scope.—If a party, after a notice, declines to produce a document, when formally called upon to do so, he will not afterwards be allowed to change his mind; and therefore, if he once refuses, he cannot, when his opponent has proved a copy, and is about to have it read, produce the original, and object to its admissibility without the evidence of an attesting witness. Neither after such refusal, will he be permitted to put the document into the hands of his opponent's witness for the purpose of cross-examination, or to produce and prove it as part of his own case. (*Taylor*, § 1818) A party who, after notice, declines, to produce his document, cannot afterwards [illegible] rt of his own case; or put it in the hands [illegible] *Ev.* 341). It is doubtful whether this [illegible] 36 C. W. N 1127=60 Cr. 641=A. I. R. 1933 Cal. 65. Accused not producing document after notice can use it to cross-examine complainant *Ibid.*

Judge's power to put questions or order production.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Scope.—The object of the questions which the Judge is here empowered to put is either to discover a relevant fact, or to obtain proper proof of it. There is accordingly no relaxation of the rules previously laid down as to relevancy. The section merely authorises questions, the object of which is to ascertain whether the case is or is not proved in accordance with this rule (*Cun. Ev.* 396); see also 57 M. 635=A. I. R. 1934 Mad. 199. Under this section, a Judge has power to ask any question he pleases about relevant facts, if he does so in order to discovor or obtain proper proof of relevant facts. 10 B. 185; see also, 11 B. H. C. 166; Cr. Reg. 14—10—1885.

The words "any witness" in this section include a Court witness. 9 O. & A. L. R. 549. Even though a document is not produced at the first hearing of a case the Court can call for the document under this section. 70 Ind. Cas. 278. The Court's decision must rest, not upon suspicion, but upon legal ground established by legal tetimony. 34 C. L. J. 107 Where the trial Court exceeded the bounds of the provisions of this section the appellate Court can interfere. 47 C. 1043

Cases.—34 M. L. J. 526; 45 Ind. Cas 734; 44 Ind. Cas. 433; 66 Ind. Cas. 15; 58 C. 1009; A. I. R. 1932 Sind 291.

Power of jury or assessors to put question.

166. In cases tried by jury or with assessors, the jury or assessors, may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

CHAPTER XI.

Of improper Admission and Rejection of Evidence.

Now new trial for improper admission or rejection of evidence.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such object is raised that, independently of the evidence objected to and admitted, there was

sufficient evidence to justify the decision, or that if the rejected evidence had been received it ought not to have varied the decision.

as civil cases. 1 C. 207 ;
H C 358 It is also appli-
-tion implies that improper
for the reversal of judg-
such rejection, yet s. 256
o pre-
parties
egards
suffi-
n, *held*
; see
W. R.
33 ; 23
lished
by legal testimony and not upon mere suspicious circumstances 25 C. W. N. 409. Retrial can be ordered if evidence is not sufficient to pronounce judgment. 35 Bom. L. R. 174=A. I. R. 1933 Bom. 152 ; see also A. I. R. 1934 Pat 55=150 Ind. Cas. 841 ; A. I R 1934 Pat. 617=152 Ind Cas 829 ; but see A. I. R. 1932 Sind 201=20 S L. R. 302=34 Cr L. J. 147. This section has no application to first appeal. A. I. R. 1934 Pat. 605 Case which is outside this section may be sent for retrial. 142 Ind. Cas. 274=34Cr L J. 294=A. I R. 1933 Cal. 136.

SCHEDULE.

ENACTMENTS REPEALED

(*See section 2*)

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo. III. Cap. 57.*	For the further regulation of trial of persons accused of certian offences committed in the East Indies , for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled "An Act for the better ... persons accused of offences committed in the East Indies)," as requires the servants of the East India Company to deliver inventories of their estates and effects for rendering the law more effectual against persons unlawfully resorting to the East Indies ; and for the more easy proof in certain cases of deeds and writings executed in Great Britain or India.	Section 38 so far as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vict, cap. 99 † ‡	To amend the law of Evidence.	Section 11 and so much of section 19 as relates to British India.
	[* * *]	

* The East India Company Act, 1786

† Short title. The Evidence Act, 1851—*see* the Short Titles Act, 1896 (59 & 60 Vict. c. 141.

‡ After this certain entries have been repealed by Act 12 of 1927.

THE INDIAN FATAL ACCIDENTS ACT, 1855.

ACT NO XIII OF 1855.

RECEIVED THE G-G'S ASSENT ON THE 27TH MARCH, 1855.

An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.

Preamble

WHEREAS no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often times right and expedient that the wrong doer in such case should be answerable in damages for the injury so caused by him ; It is enacted as follows :—

Notes—Where the loss was not occasioned by any act, neglect or default of the Railway, the company should not be made liable. 90 Ind. Cas. 1026=A. I. R. 1925 Lah. 635. Compensation is for actual loss of pecuniary benefit which the beneficiaries would enjoy. A. I. R. 1927 Bom 357=29 Bom. L. R. 402=102 Ind. Cas. 400 ; see also 72 Ind. Cas. 632=45 M. L. J 53. Licensor is liable for negligence if he does not disclose any hidden risk known to him to the licensee. A. I. R. 1927 Bom. 11 In a case under this Act costs as between attorney A. I. R. 1925 Cal. 893=52 C. 602=89 Ind. Cas. 679. ...vn as regards damages. A. I. R 1932 Lah. 355=33 P. L. R. 271 ; see also 135 Ind. Cas. 784=32 P. L. R. 866 ; A. I. R. 1927 Lah. 417.

Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.

1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default, is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

* Every such action or suit shall be for the benefit of the wife, husband, ...son whose death shall have been so caused, ... name of the executor, administrator or

and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought ; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the beforementioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.

Notes.—It is not necessary that death must be direct result of injury caused by neglect or defaul
Ind. Cas. 820
capacity to suppl
1927 All. 684 In

* Certain words before this having been omitted have been repealed by the Repealing and Amending Act X of 1914.

into consideration. A. I. R. 1927 All. 684. Court can divide between parties the sum s 346. A co-parcener of the murdered man High Court will not interfere with lower or unreasonable. A. I. R. 1926 All. 702. e awarded in respect of funeral expenses, whether for removal or disposal of the body or for outlay for ceremonial or obsequial purposes.—(O. J) I L R. 16 Bom 254 As regards modes of assessing damages *vide*, I. A. 16 (F. B.). No compensation can be allowed for mental sufferings—4 M. L. T. 238; A. I. R. 1927 All 684. The right to claim compensation is given by this Act, where there are executors or administrators to them and they are entitled to sue In the absence of them suit may be instituted by his representatives. But only one suit is maintainable. The term representative applies also to European and Eurasians—28 M. 479=15 M L. J. 363; see also 85 P. R. 1894; 56 P. R. 1905. Under s. 1 legal liability alone is not the test of injury, in respect of which damages may be recovered, but the reasonable expectation of pecuniary advantage by the deceased relative remaining alive may be taken into account, and damages given in respect of that expectation, if it be disappointed and the probable pecuniary loss thereby incurred. —20 Ind. Cas. 425; see also 26. P. W. R. 1914. Where son adopted after the death of the deceased was not considered as son of the deceased an undivided brother of the deceased cannot claim compensation—106 P. R. 1915. In a claim for damages under this Act the reasonable expectation of pecuniary advantage by the relations remaining alive may be taken into account by a jury and damages assessed as the probable pecuniary loss thereby occasioned. The fact that the deceased in some way provoked the quarrel does not affect so far as regards the claim for damage

1925 All. 702; 9 N. L J. 76=96 Ind. Cas. 403; 96 Ind. Cas. 681=A I. R. 1926 All. 703. "Representative" means and includes all or any of the persons for whose benefit 51 C. 480=A. I R 1934 persons for whose benefit Funeral expenses as well as cost of criminal suit cannot be recovered. *Ibid*

2 Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint: Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongfull act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

Not more than one suit to be brought.

Claims for loss to estate may be added.

Notes—The statute by enacting the rule allowing the legal representatives to include in their suit a claim for the loss to the estate does not create any fresh liability but merely recognizes what already existed under the common law and prescribes only the procedure for enforcing it. 90 Ind Cas 1026=6 Lah. 451. , but not for loss of 90 Ind. Cas. 1026 cribes the procedure for enforcing a right, *viz.*, recovering loss to estate, which existed under the common law. *Ibid.*

3. The plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

Plaintiff shall deliver particulars, etc.

Notes —Failure to give all particulars as regards the beneficiaries is a fatal defect. 38 C. W. N. 551 = 59 C. L. J. 391 = A. I. R. 1934 Cal. 632 ; see also 59 C. L. J. 394 = A. I. R. 1934 Cal. 712.

4. The following words and expressions are intended to have the meaning hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter, that is to say and the word "person" shall apply to bodies politic and corporate ; and the word "parent" shall include father and mother and grand-father and grand-mother ; and the word "child" shall include son and daughter and grand-son and grand-daughter and step-son and step daughter.

Interpretation clause.

THE INDIAN FINANCE ACT, 1935.

ACT NO. V OF 1935.

The following Act, which has been assented to by the Governor General under the provisions of clause (b) of sub-section (1) of section 67 B of the Government of India Act, and has been expressed to be made by the Governor General under the provisions of sub-section (2) of the same section, is hereby published for general information :—

An Act to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary certain duties leviable under the Indian Tariff Act, 1934, to fix maximum rates of postage under the Indian Post Office Act, 1898, to fix rates of income-tax and super-tax and to vary the excise duty on silver leviable under the Silver (Excise Duty) Act, 1930.

WHEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into certain parts of British India, to vary certain duties leviable under the Indian Tariff Act, 1934, * to fix maximum rates of postage under the Indian Post Office Act, 1898,† to fix rates of income-tax and super-tax, and to vary the excise duty on silver leviable under the Silver (Excise Duty) Act, 1930 ; ‡ It is hereby enacted as follows :—

Notes.—The object of this Act is to continue for a further period of one year certain duties and taxes imposed under the Indian Finance Act, 1934, which would otherwise cease to have effect from the 1st April 1935, to reduce the income-tax on incomes of Rs. 1,000 or upwards but less than Rs. 2,000 ; to reduce surcharge on income tax and super-tax ; to reduce the import duties on silver and to abolish the export duty on raw skin—*Statement of Objects and Reasons.*

Short title and extent.

1. (1) This Act may be called the Indian Finance Act, 1935.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Fixation of salt duty

2. The provisions of section 7 of the Indian Salt Act, 1882, § shall, in so for as they enable the Governor General in Council to impose by rule made under that section a duty on salt manufactured in, [illegible] British India other than Burma or Aden, be construe[illegible] day of April, 1935, they imposed [illegible] annas per maund of eighty-two and two-sevenths pounds avoirdupois of salt

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* XXXII of 1934

† XVIII of 1930.

‡ VI of 1898.

§ XII of 1882

manufactured in, or imported by land into, any such part, and such duty shall, for all the purposes of the said Act, be deemed to have been imposed by rule made under that section.

Amendments of the First and Second Schedules to Act XXXII of 1934.

3. (1) In the First Schedule to the Indian Tariff Act, 1934,*—

In Items Nos. 61 (2) and 62 (1) for the words "Five annas per ounce" in the fourth column the words "Two annas per ounce" shall be substituted.

(2) In the Second Schedule to the Indian Tariff Act, 1934,* the heading "SKINS" together with Item No. 3 under that heading shall be omitted.

Notes.—Section 3 provides for the reduction of the import duty on silver from five annas per ounce to two annas per ounce and for the abolition of the export duty on raw skins —*Notes on Clauses*

Inland postage rates.

4 For the year beginning on the 1st day of April, 1935, the Schedule contained in the First Schedule to this Act shall be inserted in the Indian Post Office Act, 1898†, as the First Schedule to that Act.

Notes —Sections 2 and 4 provide for the continuance for a further period of one year of the existing provisions regarding salt-duty and inland postage rates. The duty of Rs 1-4-0 per maund on salt remains liable to the additional duty imposed under section 5 of the Indian Finance (Supplementary and Extending) Act, 1931.—*Notes on Clauses*

Income-tax and super-tax.

5. (1) Income-tax for the year beginning on the 1st day of April, 1935, shall be charged at the rates specified in Part I of the Second Schedule, increased in each case, except in the case of total incomes of less than two thousand rupees falling under heading A in the said Part, by one sixth of the amount of the rate.

(2) The rates of super tax of the year beginning on the 1st day of April, 1935, shall, for the purposes of section 55 of the Indian Income tax Act, 1922,‡ be those specified in Part II of the Second Schedule, increased in each case by one-sixth of the amount of the rate.

(3) For the purposes of the Second Schedule "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922 ‡

(4) For the purpose of assessing and collecting income-tax on total incomes of less than two thousand rupees the Indian Income-tax Act, 1922,‡ shall be deemed to be subject to the adaptations set out in Part III of the Second Schedule

(5) For the purpose of any assessment to be made for the year ending 31st March, 1936, the rate of income-tax applicable to such part of the total income of any person as is derived from salaries or from interest on securities paid in the year ending 31st March, 1935, shall be the previous year's rate, and for the purposes of refunds under sub-section (1) or sub-section (3) of section 48 in respect of dividends declared in the year ending 31st March, 1935, or of payments made in the said year of salaries or of interest on securities, the rate applicable to the total income of the person claiming refund shall be the previous year's rate.

Explanation —In this sub-section the term "previous year's rate" with reference to any person means the rate of income tax which would have been applicable to his total income if he had been assessed for the year ending 31st March, 1935, on a total income equal to that on which he is assessable for the year ending 31st March, 1936.

* XXXII of 1934 † VI of 1898. ‡ XI of 1922.

ance for a further period of one year with the following alterations :— income is Rs. 1,000 or upwards but is less than Rs 1,500 is reduced from 2 pies to 1⅓ pies ; (b) the rate of income-tax when the total income is Rs. 1,500 or upwards but less than Rs 2,000 is reduced from four pies to 2⅔ pies , and (c) the surcharges on income-tax and super-tax are reduced from one-fourth to one-sixth. As it is proposed to retain the tax on incomes of annum at a reduced rate, clause 5 (4) cedure for the assessment of such Legislature. Clause (5) of section 5 on securities should be finally taxed for the purposes of income-tax and not super-tax at the rates applicable to a total income of like amount which was in force at the time when the taxation at source on these incomes took place ; otherwise salary-earners, for example, will be able not only to secure the advantage of reduced rates during (1935-36), but also to obtain a refund of part of the tax which had been deducted from their salaries during (1934-35). It also makes a similar provision for purposes of refunds under sub-section (1) or sub section (3) of section 48 in respect of dividends delared in the year ending 31st March 1935, or of payments made in the said year of salaries or of interest on securities. These provisions form the counterpart of a concession that has been allowed from time to time in the past when rates of income tax were being enhanced.—*Notes on Clauses.*

Excise duty on silver.

6. In sub-section (1) of section 3 of the silver (Excise duty) Act, 1930,* for the words "five annas" the words "two annas" shall be substituted.

Notes.—This section provides for the reduction of excise duty on silver corresponding to the reduction in import duty.—*Notes on Clauses.*

SCHEDULE I.

Schedule to be inserted in the Indian Post Office Act, 1898.

[*See section 4.*]

"THE FIRST SCHEDULE.

INLAND POSTAGE RATES.

[*See Section 7.*]

Letters.

. . . . . .	One anna.
t not exceeding two	One anna and three pies.
For every two and a half tolas, or fraction thereof, exceeding two and a half tolas	One anna and three pies.

Postcards.

Single	Nine pies.
Reply	One and a half annas.

Book, Pattern and Sample Packets.

For the first five tolas or fraction thereof	Nine pies.
For every additional five tolas or fraction thereof in excess or five tolas	Six pies.

Registered Newspapers.

For a weight not exceeding eight tolas	Quater of an anna.
For a weight exceeding eight tolas and not exceeding twenty tolas.	Half an anna.
For every twenty tolas, or fraction thereof, exceeding twenty tolas	Half an anna.

*XVIII of 1930

Parcels.

For a weight not exceeding twenty tolas. . . .	Two annas.
For a weight exceeding twenty tolas and not exceeding forty tolas.	Four annas.
For every forty tolas or fraction thereof, exceeding forty tolas.	Four annas."

SCHEDULE II.

[*See section 5.*]

PART I.

Rates of Income-tax.

	Rate.
A. In the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—	
(1) When the total income is Rs. 1,000 or upwards, but is less than Rs 1,500.	One and one-third pies in the rupee.
(2) When the total income is Rs. 1,500 or upwards, but is less than Rs. 2,000	Two and two thirds pies in the rupee.
(3) When the total income is Rs. 2,000 or upwards, but is less than Rs. 5,000.	Six pies in the rupee.
(4) When the total income is Rs. 5,000 or upwards, but is less than Rs 10,000.	Nine pies in the rupee.
(5) When the total income is Rs. 10,000 or upwards, but is less than Rs. 15 000.	One anna in the rupee.
(6) When the total income is Rs. 15,000 or upwards, but is less than Rs. 20,000.	One anna and four pies in the rupee.
(7) When the total income is Rs. 20,000 or upwards, but is less thas Rs. 30,000.	One anna and seven pies in the rupee.
(8) When the total income is Rs 30,000 or upwards, but is less than Rs. 40,000	One anna and eleven pies in the rupee.
(9) When the total income is Rs. 40,000 or upwards, but is less than Rs. 1,00,000.	Two annas and one pie in the rupee.
(10) When the total income is Rs. 1,00,000 or upwards.	Two annas and two pies in the rupee.
B. In the case of every company and registered firm, whatever its total income.	Two annas and two pies in the rupee.

PART II.

Rates of Super-tax.

	Rate.
In respect of the excess over thirty thousand rupees of total income—	
(1) In the case of every company—	
(*a*) In respect of the first twenty thousand rupees of such excess.	*Nil.*
(*b*) for every rupee of the remainder of such excess.	One anna in the rupee.
(2) (*a*) in the case of every Hindu undivided family—	
(*i*) in respect of the first forty-five thousand rupees of such excess	*Nil.*
(*ii*) for every rupee of the next twenty-five thousand rupees of such excess	One anna and three pies in the rupee.
(*b*) in the case every individual, unregistered firm and other association of individuals not being a registered firm or a company—	
(*i*) for every rupee of the first twenty thousand rupees of such excess.	Nine pies in the rupee.
(*ii*) for every rupee of the next fifty thousand rupees of such excess.	One anna and .: pies in the

	Rate.
(c) in the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—	
(i) for every rupee of the next fifty thousand rupees of such excess.	one anna and nine pies in the rupee.
(ii) for every rupee of the next fifty thousand rupees of such excess.	Two annas and three pies in the rupee.
(iii) for every rupee of the next fifty thousand rupees of such excess.	Two annas and nine pies in the rupee.
(iv) for every rupee of the next fifty thousand rupees of such excess.	Three annas and three pies in the rupee.
(v) for every rupee of the next fifty thousand rupees of such excess.	Three annas and nine pies in the rupee.
(vi) for every rupee of the next fifty thousand rupees of such excess.	Four annas and three pies in the rupee.
(vii) for every rupee of the next fifty thousand rupees of such excess.	Four annas and nine pies in the rupee.
(viii) for every rupee of the next fifty thousand rupees of such excess.	Five annas and three pies in the rupee.
(ix) for every rupee of the next fifty thousand rupees of such excess.	Five annas and nine pies in the rupee.
(x) for every rupee of the remainder of such excess.	Six annas and three pies in the rupee

PART III.

Adaptations of the Indian Income-tax Act, 1922, to provide for the summary assessments of income-tax on total incomes of less than Rs. 2,000.

1. The Income [illegible] section (2) of secti[illegible] assessment of the [illegible] on the assessee a notice of demand in a form to be prescribed by the Central Board of Revenue; and such notice shall be deemed to be a notice of demand under section 29 of that Act.

2. Any assessee in respect of whom such summary assessment has been made, may, within thirty days of receipt of the notice of demand, make an application to the Income tax Officer for the cancellation or revision of the assessment, and the Income-tax Officer shall, after examining any accounts and documents and [illegible]

[illegible] on 22 of the Indian Income-tax Act, 1922, [illegible] rn under that sub-section and shall be [illegible] shall be served on the assessee to [illegible] notice of demand under section 29 of the Indian Income-tax Act, 1922.

[illegible] and collection during [illegible] d and less than Rs. [illegible] 1934-35).

This Bill has been consented to by the Council of State.

M. B. DADABHOY,
President, Council of State.

The 16th April, 1935.

I assent to this Bill.

WILLINGDON,
Viceroy and Governor General.

The 22nd April, 1935.

This Act has been made by me as Governor General under the provisions of section 67B of the Government of India Act.

WILLINGDON,
Viceroy and Governor General.

The 22nd April, 1935.

WHEREAS I, Freeman, Earl of Willingdon, am of opinion that a state of emergency exists which justifies the direction by me that the Indian Finance Act, 1935, being an Act made by me under the provisions of section 67B of the Government of India Act, shall come into operation forthwith :

Now, THEREFORE, in exercise of the power conferred by the proviso to sub-section (2) of that section, I do hereby direct accordingly.

WILLINGDON,
Viceroy and Governor General.

The 22nd April, 1935.

THE INDIAN FOREIGN MARRIAGE ACT, 1903.

ACT NO. XIV OF 1903.

Received the assent of the Governor General on the 23rd *October* 1903.

An Act to give effect to the Foreign Marriages Order in Council, 1903.

WHEREAS it is expedient to give effect to the Foreign Marriages Order in Council, 1903 ; It is hereby enacted as follows :—

Short title, extent and application.

1. (1) This Act may be called the Indian Foreign Marriage Act, 1903.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas, the Shan States and the Pargana of Spiti ; and

(3) It applies also to all British subjects and to all servants of the King, whether British subjects or not, in the territories of any Native Prince or State in India.

Notice of marriage intended to be solemnized under 55 & 56 Vict., c. 23

2. (1) Notice in writing of a marriage which it is intended to solemnize under the Foreign Marriage Act, 1892*, may be given by one of the parties intending such marriage, to—

(a) a Marriage Registrar appointed under the India Christian Marriage Act, 1872†, where either of such parties is a person professing the Christian religion ;

(b) a District Magistrate, Chief Presidency Magistrate or Political Agent, where neither of such parties is a person professing the Christian religion :

Provided that the party giving such notice as aforesaid shall have had his usual place of abode for not less than three consecutive weeks immediately preceding the giving of notice within the local limits of the area for which the Marriage Registrar, Magistrate or Political Agent to whom the notice is given, is appointed.

(2) Every notice given under this section shall state—

(a) the name, surname, age and profession or condition of each of the parties intending marriage ;

(b) the residence of each of them ;

(c) the time during which each of them has dwelt there ; and

(d) the place in which the intended marriage is to be solemnized ;

and it shall contain a declaration by the party giving the notice to the effect

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* 55 & 56 Vict., c. 23.

† Act XV of 1872.

that he believes that there is no impediment of kindred or affinity or other lawful hindrance to the solemnization of the said intended marriage.

(3) A copy of every notice given under this section shall be published by being affixed in some conspicuous place in the office of the officer to whom the notice is given.

(4) On the expiration of four clear days after such notice as aforesaid has been published in the manner prescribed by subsection (3), the officer to whom the notice is given, unless he is aware of any impediment of kindred or affinity or other lawful hindrance to the solemnization of the said intended marriage, shall, on payment of such fee (if any) as the Governor-General in Council may fix in this behalf, furnish the party by whom the notice was given, with a certificate, under his hand and seal, to the effect that the notice has been so given and published.

THE GENERAL CLAUSES ACT, 1897.

ACT NO. X OF 1897*

Received the G. G's assent on the 11th March 1897.

An Act to consolidate and extend the General Clauses Acts, † *1868 and 1887.*

Whereas it is expedient to consolidate and extend the General Claus s Acts, 1868,† and 1887; It is hereby enacted as follows;—

Notes.—To revive a repealed statute, it is necessary under the above Acts to state the purpose in the Repealing Act, as in the case of English Repealing Acts, passed since 1850. 44 C. 459=20 C. W. N. 1327=37 Ind. Cas. 48.

PRELIMINARY.

Short title.

1. (1) This Act may be called the General Clauses Act, 1897.‡

(2) Rep. by Act X of 1914.

2. (*Repealed by Act I of 1903*)

GENERAL DEFINITIONS.

Definitions.

3. In this Act, and in all Acts of the Governor General in Council and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

Notes.—This Act applies to Acts passed by the Governor-General in Council only. 1 Bom. L. R. 164.

"Abet."

(1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code:

Notes.—Section 107 of the Indian Penal Code gives the definition of abetment of a thing.

, see *the Gazette of India* 1897, Pt. V, p. : *ibid*, p. 77; and for Proceedings in
'6.
y.
..ct X of 1914.

(2)* "act," used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions :

"Act."

Notes.—Act done includes illegal omission. *Vide* section 32 of the Penal Code ; 1 Weir 29 ; 20 B. 394.

(3)† "affidavit" shall include affirmation and declaration in the the case of persons by law allowed to affirm or declare instead of swearing :

"Affidavit."

Affidavit.—The words "oath", "swear" and "affidavit" include affirmation, declaration, affirming and declaring in the case of persons by law allowed to declare or affirm instead of swearing.—*Interpretation Act*, 1889, 52 & 53 *Vict* C. 66, ss. 1, 3, 4.

"(3a)‡ 'Assam Act' shall mean an Act made by the Chief Commissioner of Assam in Council, under the Indian Councils Acts 1869 to 1909 "or the Government of India Act, 1915"§ "or by the local Legislature or the Governor of Assam under the Government of India Act"‖

"Assam Act."

(4)¶ "barrister" shall mean a barrister of England of Ireland, or a member of the Faculty of Advocates in Scotland :

"Barrister."

(5)** "Bengal Act" shall mean, in the case of Acts passed prior to the 1st April, 1912, an Act made by the Lieutenant Governor of Bengal in Council under Indian Councils Acts, 1861, or the Indian Councils Acts 1861 and 1892 or the Indian Councils Acts, 1861 to 1909 and in the case of Acts passed after that date an act made by the Governor of the Presidency of Fort William in engal in Council under the Indian Councils Act, 1861 to 190?, "or the G nment of India Act, 1915," § "or *by the local Legislature or the Gove...or of the Presidency* of Bengal under the Government of India Act" ‡

"Bengal Act"

"(5a)‡ "Bihar and Orissa Act" shall mean an Act made by Lieutenant Governor of Bihar and Orissa in Council, under the Indian Councils Acts, 1861 to 1909" "or the Government of India Act, 1915"§ "or by the local Legislature or the Governor of Bihar and Orissa under the Government of India Act."‖

"Bihar and Orissa Act"

(6) "Bombay Act" shall mean an Act, made by the Governor of Bombay in Council under "the Indian Councils Act, 1861 or" the Indian Councils Acts, 1861 †† and 1892† or the Indian Councils Acts 1861 to 1909‡ "or the Government of India Act, 1915"§ "or by the local Legislature or the Governor of the Presidency. of Bombay under the Government of India Act,"‡

"Bombay Act"

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* Compare the Indian Penal Code (Act XLV of 1860) and the Madras General Clauses Act (Mad. Act III of 1891.)

"Swear" in sub ss. (35) and (39) respec- ...ceedings see Ch. XVI of the Code of ...ninal proceedings, see Code of Criminal Procedure (Act V of 1898.)

‡ Added by Act 10 of 1914.

§ The words within quotations have been added by Act 24 of 1917.

‖ Added by Act 18 of 1928.

¶ Compare the Indian High Courts Act, 1861, (24 & 25 Vict., c 104), s. 19.

** Clause (5) has been substituted by Act 10 of 1918.

†† Statute 24 and 25 Vict, c 14 respectively. The words quoted have been by Act I of 1903.

"British India."

(7)* "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor General of India.

Notes.—*Quetta* does not come within the term British India. 28 S. L. R. 54. A. I. R. 1934 Sind 123.

"British possession."

(8)† "British possession" shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.

"Burma Act."

(8a)‡ "Burma Act" shall mean an Act made by the Lieutenant Governor of Burma in Council under "the Indian Councils Acts, 1861 and 1892" "or the Indian Councils Acts, 1861 to 1909§ "or the Government of India Act," 1915‖ "or by the Local Legislature or the Governor of Burma under the Government of India Act,"¶

"Central Provinces Act"

(8b)** "Central Provinces Act" shall mean an Act made by the Chief Commissioner of the Central Provinces in Council under "the Indian Councils Acts 1861 to 1909 "or the Government of India Act, 1915" † "or by the Local Legislature or the Governor of the Central Provinces under the Government of India Act."

"Chapter."

(9) "Chapter" shall mean a Chapter of the Act or Regulation in which the word occurs.

"Collector."

(10)‡‡ "Collector" shall mean in a Presidency town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the Chief Officer in charge of the revenue administration of a district.

"Colony."

(11) †"Colony" shall mean any part of Her Majesty's dominions, exclusive of the British Islands and of British India, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony;

"Commencement"

(12) "Commencement," §§used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force:

"Commissioner."

(13)‖‖ "Commissioner" shall mean the chief officer in charge of the revenue administration of a division:

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* Compare the Interpretation Act, 1889 (52 & 53 Vict. c. 63,) s. 18 (4) For definition of "India" see *infra*, sub s. (27)

† Compare the Interpretation Act, 1889 (52 & 53 Vict, C. 63) ss. 18 (2). and (4)

‡ Clause (8a) has been added by Act I of 1903

§ Added by Act 10 of 1914

‖ The words within quotations have been added by Act 24 of 1917.

¶ Added by Act 18 of 1928.

** Added by Act XVII of 1914.

‡‡ Compare the Bombay General Clauses Act, (Bom. Act III of 1886) s.3, (12), and the N. W. P. and Oudh General Clauses Act (N. W. P. and Oudh Act I of 1887) s. 2. (12).

§§ For rules determining when any given Act is to come into force, see s. 5. *infra*.

‖‖ Compare the N. W. P. and Oudh General Clauses Act N. W. P. and Oudh Act I of 1887).

(14) "Consular officer" * shall include consul-general, consul, vice-consul, consular agent, pro-consul, and any person for the time being authorised to perform the duties of consul-general, consul, vice-consul, or consular agent :

"Consular officer."

(15) † "District Judge" shall mean the Judge of a principal Civil Court of original Jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction :

"District Judge"

Notes.—High Court exercising jurisdiction other than under Letters Patent, would fall under the definition of a District Court in the Succession Act. A. I. R. 1930 Mad. 779=126 Ind. Cas. 481.

(16)‡ "Document shall include any matter written, expressed, or described upon any substance by means of letters, figures, or marks or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter :

"Document"

(16a)§ "Eastern Bengal and Assam Act" shall mean an Act made by the Lieutenant Governor of Eastern Bengal and Assam in Council under the Indian Councils Acts, 1861 and 1892 "or the Indian Councils Act 1861 to 1909" :

"Eas ern Bengal and Assam Act".

(17) "Enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such regulation as aforesaid :

"Enactment"

"Father"

(18) "Father", in the case of any one whose personal law permits adoption, shall include an adoptive father :

Notes.—Among the Hindus, the adoptive father is a father.

"Financial year."

(19)‖ "Financial year" shall mean the year commencing on the first day of April :

(20)¶ A thing shall be deemed to be done in "good faith" where it is in fact done honestly whether it is done negligently or not :

"Good faith"

transfer of property Act. A. I R. 1928 All. 41=25 A L J. 926=107 Ind. Cas. 36. "Good faith" means honesty of dealing. Auction purchaser is not bound to search registry. A. I R. 1931 All. 277=1931 A L J 273.

(21)§§ "Government" or "the Government" shall include the Local Government as well as the Government of India :

"Government."

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* Compare the Consular Salaries and Fees Act 1891 (54 & 55 Vict. c 36) s. 3.

† As to definition of "High Court" see sub-s (24) infra

‡ Compare the Indian Evidence Act (I of 1872) As to definition of written, see

914.

29.

[illegible]), s. 90 and the

, see *the Gazette of India*, 1897, Pt. VI, pp. 56 to 62 and 76 to 79

§§ Compare the Code of Civil Procedure (Act V of 1908), s. 2. As to definiti of Local Government, see sub-s. (29), infra.

Notes.—Under clauses 21 and 29, the words "Government established by law in British India or the administration of justice in British India" do not apply only to the Supreme Government of India, but are equally applicable to Local Governments such as the Government of the N. W. Frontier Provinces. 18 Ind. Cas 347. The word "Government" does not include British Government. The expression "includes" and "shall include" is used in interpretation clauses in two senses. The ordinary and general sense in which it is used is to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used, these words or phrases must be construed as comprehending not only such things as they signify as their natural import, but also those things which the interpretation clause declares that they shall include. It is also susceptible of another construction which may become imperative, if the content of the act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the word or expression defined. It may be equivalent to "mean and include" and in that case it may afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to those words or expression. The expression in S. 3, clauses 21 and 40 is used in the restricted sense as equivalent to mean and include. A. I. R. 1934 Sind 96=28 S. L. R. 27=1934 Cr. C. 821.

(22) "Government of India" shall mean the Governor-General in Council or, during the absence of the Governor-General from his Council, the President in Council, or the Governor General alone as regards the powers which may be lawfully exercised by them or him respectively :

"Government of India"

(23)*

(24) "High Court," used with reference to Civil proceedings, shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates :

"High Court."

Notes.—Chief Court of Oudh is High Court within meaning of S. 109 (b) though not under s. 111 C P Code. A. I. R. 1932 Oudh 163=of O. W. N. 1207.

(25) "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.†

"Immovable property."

Immovable property.—An interest in Royalty is not immovable property. 65 Ind. Cas. 673. Immovable property comprehend all that would be real property according to English law and possibly more. 10 B. L. R. 234 (P. C). Growing trees are immovable property but growing crops are movable property. 10 A. L. J. 516 13 Bom. L. R. 874; 9 Ind. Cas. 478; 13 C. 262. 10 A. 133. 31 C. 666; 16 M. 439; but see 23 M. L J. 620=17 Ind [illegible] right of way is an immovable pro[illegible] a ferry (L. R.) 5 All. 974 or a right [illegible] C. 544, 24 C. 449). Where a pug [illegible] 43 Ind. Cas. 625=11 Bur L. T. 199. [illegible] A.I.R. 1934 Rang. 250 (F.B.)=12 Rang 370=151 Ind Cas. 519; see also 586. [illegible] 34 C. W. N. 605, 54A. 437; A. I. R. 1927 Lah. 373. A simple mortgage debt is to be attached under order 21, rule 46, C. P. Code as a debt and not as immovable property under order 21, rule 54 C. P. Code. 6 O. L. J. 49=21 O. C. 400=50 [illegible], 917=22 P. L. J. 840. Building [illegible] 373=9 L. L. J. 157=28 P. L. [illegible] reap the produce as tenant are [illegible]. 684=58 Ind. Cas. 321. Money [illegible] harged on rent and profits of land. 18 O. C. 380. 3 O. L. J. 20=33 Ind. Cas. 555. A several fishery is an incorporeal hereditament as would normally be considered real or immovable property. A. I. R. 1921 Bom. 93=23 Bom. L. R. 939. A sale of a mortgagee's interest can only be effected by means of a registered deed of transfer. A. I. R. 1929 All. 161=1929 A. L. J.

* Repealed by Act 18 of 1919.

† As to growing crops and timber so far as they are affected by the Indian Registration Act, (XVI of 1908), see s. 3 of that Act.

‡ Compare the Interpretation Act, 1889 (52 & 53 Vict. c. 63) s. 18 (5).

279=51 A. 494=119 Ind. Cas. 241. Standing crops are immovable property. 13 P. L. T. 519=A. I. R. 1932 Pat. 344=34 Cr. L. J. 355.

"Imprisonment."

(26) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code :

Imprisonment—According to the Indian Penal Code, an imprisonment may be of two descriptions, namely :—
(1) Rigorous, that is, with hard labour,
(2) Simple.

"India."

(27)* "India" shall mean British India, together with any territories of any Native Prince or Chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India :

'Local authority.'

(28)† "Local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund :

"Local Government."

(29) "Local Government" shall mean the person authorized by law to administer executive Government in the part of British India in which the Act or Regulation containing the expression operates, and shall include a Chief Commissioner :

"Madras Act."

(30) "Madras Act" shall mean an Act made by the Governor of Fort St. "George ıı . . . ; Act, 1861, . . and 1892‡" "or the Indian Councils Acts, ... India Act, 1915 ;"§ "or by the local legislature of the Governor of the Presidency of Madras under the Government of India Act "¶

"Magistrate".

(31) "Magistrate" shall include every person exercising all or any of the powers of a magistrate under the Code of Criminal Procedure for the time being in force : **

Notes—44 M L J. 428 ; 56 M L J. 628.

"Master" (of a ship).

(32) †† master" used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship :

"Month."

(33) "month" shall mean a month reckoned according to the British calendar :

"**Month**—The word "month" according to the Interpretation Act means calendar month ; see also 13 C W. N 425.

"Movable property"

(34) "movable property" ‡‡ shall mean property of every description, except immovable property :

.. . part of the record in a criminal case severed from "the earth" it becomes . .. .. '5 (F B.) ; 10 M. 255 ; 4 M. 228. The . . . . 4 L. W. 613=18 Cr. L. J. 1=36 Ind.

* Compare the Interpretation Act, 1889 (52 & 53 Vict c 63) s. 18 (5).
† Compare the Local Authorities Loan Act (XI of 1879)
‡ Statues 24 & 26 Vict, c. 14. respectively The words quoted have been inserted by Act I of 1903
§ The words within quotations have been added by Act 10 of 1914
‖ The words within quotations have been added by Act 24 of 1917
¶ Inserted by Act 18 of 1928
** The Code now in force is Act V of 1898.
†† See s. 742 of the Merchant Shipping Act, 1894 (52 & 53 Vict. c. 60).
‡‡ For a comprehensive definition of the word "property," see s. 168 of the Bankruptcy Act, 1883 (45 and 47 Vict., c. 52).

Cas. 833. Shares in a company are goods. But they are peculiar kinds of movable property which cannot pass freely from hand to hand. A. I. R. 1923 Bom. 372=25 B. L. R. 414=82 Ind. Cas. 977.

"North-Western Provinces and Oudh Act"

(35) "North-Western Provinces and Oudh Act" shall mean an act made by the Lieutenant-Governor of the North Western Provinces and Oudh in Council under "the Indian Councils Act 1861, or" the Indian Councils Acts, 1861 and 1892 :

Notes.—Now read "United Provinces of Agra and Oudh" and "Lieutenant-Governor of the United Provinces of Agra and Oudh in Council" respectively—*Vide* U. P. Act VIII of 1902.

"Oath."

(36) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing :

"Offence"

(37)* "offence" shall mean any Act or omission made punishable by any law for the time being in force :

Notes.—*Vide* notes under "affidavit" There does not appear to be anything in the Mussalman *Wakf* Act which is repugnant to the definition of an offence contained in the General Clauses Act. A. I. R. 1928 Sind 43=28 Cr. L. J. 954=22 S. L. R. 141=105 Ind Cas. 666.

"Part."

(38) "part" shall mean a part of the Act or regulation in which the word occurs :

"Person."

(39) "person" shall include any company or association or body of individuals, whether incorporated or not :

Notes.—By 52 & 53 Vict. c. 63. s. 19 "person" includes any body corporate or unincorporate, "unless the contrary intention appears." See also *R.* v. *Gardner Corp.* 79 ; *R.* v. *York*, 6 A. & E. 419 ; *R.* v. *Beverley's Gas*, Co. Ltd. 645 ; *Pharmaceutical Soc.* v. *London Supply Association*, 5 App. Cas. 857 ; *Hirst* v. *West Riding*, (1901) 2 K. B 560 C A ; 1923 Lah. 31. A firm is a person 48 M. 702. A company is a person, 41 M. 624=45 Ind. Cas. 164 ; see also A. I. R. 1925 Mad. 1048=48 M. 602=49 M. L. J. 124=90 Ind Cas. 649 ; A. I. R. 1923 Lah. 31=24 Cr. L. J. 463=72 Ind. Cas. 623. The word "person" as used in the definition of "Guardian" in s. 4 cl. (2), Guardian and Wards Act is not to be read in the light of the meaning given to it by s. 3, cl (39), General Clauses Act., A. I. R. 1930 Cal. 397=51 C. L. J. 272=126 Ind. Cas. 707.

"Political Agent."

(40) †"Political Agent" shall include—

(*a*) the principal officer representing the Government in any territory or place beyond the limits of British India, and

(*b*) any officer of the Government of India or of any Local Government appointed by the Government of India or the Local Government to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction and extradition :

"Presidency town"

(41)‡ "Presidency-town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be :

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* See a similar definition in s. 4 (o) of the Code of Criminal Procedure (Act V of 1898).

† See s. 3 of the Foreign Jurisdiction and Extradition Act (XXI of 1879).

‡ See s. 4. (*h*) of the repealed Code of Criminal Procedure (Act X of 1882), and compare s. 3 (25) of the Madras General Clauses Act (Mad. Act I of 1891).

"Privy Council."

(42) * "Privy Council" shall mean the Lords and others for the time being of Her Mejesty's Most Honourable Privy Council :

"Province."

(43) † "Province" shall mean the territories for the time being administered by any Local Government :

"Public nuisance."

(44) ‡ "Public nuisance" shall mean a public nuisance as defined in the Indian Penal Code :

Public nuisance—In order to convict a person for committing public nuisance under the Indian Penal Code, injury, danger or annoyance must be shown to have been caused to the enjoyment of property or to the exercise of a public right on the part of a portion of the community or of any particular class of people. 9 W. R. Cr. 70 ; 1 C. P. L. R 25 Cr ; 1 Wier. 245

"Punjab Act".

(44*a*) "Punjab Act" shall mean an Act made by the Lieutenant-Governor of the Punjab in Council under the Indian Council Acts, 1861 and 1892 : "or the Indian Councils Acts, 1861 to 1909" "or the Government of India Act, 1915"§ "or by the local legislature or the Governor of the Punjab under the Government of India Act" : ‖

"Registered."

(45)¶ "Registered" used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents :

"Regulation."

(46) "Regulation" shall mean a Regulation made under the Government of India Act, 1870 ; "or the Government of India Act, 1915**" "or the Government of India Act :"

"Rule"

(47) "rule," shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment : ††

[illegible] ich [illegible] day [illegible] out t' [illegible] be of the same effect as if contained in the [illegible] must be treated for [illegible] as if they were i[illegible] section of the Act, [illegible] sections of the Act [illegible] provision must give way, and probably the rule would be treated as subordinate to the section. *Per Lord Herschell* in *Institute of Patent Agents* v. *Lookwood*, (1894, A. C at p. 360).

"Schedule."

(48) "schedule" shall mean a schedule to the Act or regulation in which the words occurs :

"Scheduled District"

(49) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874 : ‡‡

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* Compare s. 12 (5) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63)

† Compare s. 4 (*g*) of the repealed Code of Criminal Procedure Act (X of 1882).

‡ As to procedure in the case of public nuisances, see the Code of Criminal Procedure (Act V of 1898) Ch. X.

§ Cl. (44a) has been inserted by Act I of 1903.

[illegible] Act I of 1891). s. 3 (11). As [illegible] (XVI of 1908).

[illegible] s defined in this sub-section.

‡‡ Act XIV of 1874.

"Section."

(5o) "section" shall mean a section of the Act or Regulation in which the word occurs :

"Ship."

(51)* "ship" shall include every description of vessel used in navigation not exclusively propelled by oars :

"Sign.

(52)† "sign," with its grammatical variations and cognate expressions shall with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions :

35=36 C. L. J. 109=50 C. 180=70 Ind. Cas. 794.

"Son".

(53) "son," in the case of any one whose personal law permits adoption, shall include an *adopted son :*

"Sub-section."

(54) "sub-section" shall mean a sub-section of the section in which the word occurs :

"Swear"

(55)‡ "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing :

"United Provinces Act."

(55a) "United Provinces Act" shall [illegible] Governor of [illegible] Oudh (or of [illegible] Oudh) in Council under the Indian Counc[illegible] Acts, 1861 and 1892 : "or the Indian C[illegible] Government of India Act 1915"‖ "or by t[illegible] of the United Provinces under the Government of India Act : ¶

"Vessel."

(56) "vessel" shall include any ship or boat or any other description of vessel used in navigation :

"Will."

(57)** "Will" shall include a codicil and every writing making a voluntary posthumous disposition of property :

Will—This definition is incomplete. It does not speak of the ambulatory character of the document *Vide Jarman on Wills*, pp. 27, 28. It should not take effect until after the death of the testator. *Cocke* v. *Cocke*, 1 P. & D. 243 ; *Masterman* v. *Maberly*, (1829) 2 Hagg. at p. 248 ; *Robertson* v. *Smith*, (1870) 2 P. & D. at p. 45. Some disposition of property by Will is necessary 49 Ind Cas. 929=25 M. L. T. 204=9 L. W. 385.

"Writing."

(58) †† expressions referring to "writing" shall be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form and

[illegible] This

¶ Added by Act 18 of 1928.

** See the definition of "Will" in s. 3 of the Indian Succession Act X of 1865.

†† Compare s. 20 of the Interpretation Act, 1889, 52 and 53 Vict. c. 63.

"Year." (59)* "year" shall mean a year reckoned according to the British calendar.

Year—Half a year consists of 182 and a quarter of a year of 91 days—*Maxwell*, p 604. A
, should not be considered
to mean a
. Cas. 44=A. I. R. 1924
Nag 211
dence does not show, that
the parties usually went by the Gregorian Calendar, provisions of General Clauses Act, s 3 (59), do not apply A I. R 1922 Nag. 265=71 Ind Cas 45.

Application of foregoing definitions to previous enactments

4. (1) The definitions in section 3 of the following words and expressions, that is to say, "affidavit", "barrister," "British India," "District Judge", "father", "Government of India,"†"High Court", "immovable property", "imprisonment", "Local Government" "Magistrate," "month," "movable property", "oath," person," "section", "son," "swear," "Will," and "year," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

(2) The definition in the said section of the following words and expressions, that is to say, "abet", "chapter," commencement," "financial year," "local authority," "master," "offence," "part," "public nuisance," "registered," "schedule," 'ship,' "sign," "sub-section," and "writing," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor General in Council and Regulations made on or after the fourteenth day of January, 1887.

General Rule of Construction

Coming into operation of enactment

5. (1) Where any Act of the Governor General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor-General.

(2) ‡ Where any Act of the Governor-General in Council is reserved, under section 63 of the Goverment of India Act, 1915, for the signification of His Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to, by His Majesty, on the day on which that assent is duly notified.

(3) § Unless the contrary is expressed, an Act of the Governor General in Council or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Notes—A Statute takes effect from the first moment of the day on which it is passed, unless another be expressly named, in which case it comes into operation immediately on the expiration of the previous day. But where a particular day is named for its commencement, but the Royal assent is not given till a later day, the Act comes into operation only on the later day. *Burn* v. *Carvalho*, (1834) 4 New. & M. 893; *Maxwell*, pp. 739, 740.

Effect of repeal

6. ‖ Where this Act, or any Act of the Governor General in Council or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

*As to "financial year.", see sub-s. (10) *supra*.
† Rep. by Act 18 of 1919
‡ Sub-section 2 of section 5 has been substituted by Act 24 of 1917.
§ Compare s. 36 (2) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).
As to power to make rules between the passing and commencement of an which does not come into force atonce, see s. 22, *infra*.
‖ Compare s. 38 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

(*a*) revive anything not in force or existing at the time at which the repeal takes effect ; or

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

(*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or

(*d*) affect any penalty, forfeiture or punishment incurred in respect of and offence committed against any enactment so repealed ; or

(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Effect o

it as comple

fication that

duly determined under the repealed law. *Lemn* v. *Mitchell*, (1912) 81 L. J. P. C. 173; (1912) A. C 400 P. C ; *Comp* v. *Southamton*, (1916) 86 L. J. K. B. 66 C. A ; (1917) I K B. 1259. Where an Act is repealed, and the repealing enactment is repealed by another which manifests no intention that the first shall continue repealed, the common law rule was that the repeal of the second Act revived the first ; and revived it, too, *ab initio*, and not merely from the passing of the reviving Act, 2 Inst. 686 ; 4 Inst 325 ; *Case of Bishops*, 12 Rep 7 ; *Philips* v. *Hopwood*, 10 B. & C. 39 ; *Tattle* v. *Grimwood*, 3 Bing 496 ; *Fuller* v *Redman*, 29 L J. Ch. 324 ; *Kemp* v. *Waddingham*, (1866) L. R. 1 Q. B. at p. 358. But this rule ceased to apply to repealing Acts passed since 1850, so far as England is concerned. Now by s. 11 of the English Interpretation Act (52 & 53 Vict. c. 63) where an Act repealing in whole or in part a former Act is itself repealed, the last repeal does not revive the Act or provisions before repealed, unless words be added reviving them—*Maxwell*, p. 728. A vested right under the repealed Act is saved. 9 Ind. Cas 337=14 O. C. 10 ; 20 C. W. N. 952=34 Ind. Cas. 27 ; 84 P. W. R. 1912 ; 97 Ind Cas. 608 ; 13 C. W. N. 604 ; 50 Ind. Cas 94 (F. B). But repeal of an article of limitation cannot revive suits already barred under repealed article. 14 Bom. L. R. 1908 ; see also 36 C. 506=15 Ind. Cas 551 This rule does not apply where the first Act was only modified by the second, by the addition of conditions, and the enactment which imposed these was itself afterwards repealed. *Mount* v. *Taylor*. L. R. 3 C. P. 645 ; *Levi* v. *Sanderson*, L. R, 4 Q. B. 332 ; *Mirfin* v.

264=5 S. L. R. 184 ; 8 Ind.

there are clear statutory autho-

nce of s. 6, General Clauses Act

But these provisions do not cover an amendment to the Bombay High Court's Letters Patent A. I. R. 1928 Bom. 371=52 B. 753=30 Bom. L. R. 942=114 Ind. Cas. 241. When an Act of the Governor General in Council repeals any enactment, then, unless a different intention appears, the repeal shall not affect retrospectively. A. I.R. 1927 Cal 748=31 C. W N. 1007=103 Ind. Cas. 674. The repeal or amendment of an Act does not affect a right already in existence, unless a contrary intention is made out. 6 Pat. 295=A. I R. 1927 Pat. 203=6 Pat. 296=8 P. L. T. 841=104 Ind. Cas 580

Clause (b)—35 A. 227=17 C. W N. 605 P. C.

Clause (c)—It includes the right of appeal. 16 C.W. N. 1015. See also 45 Ind. Cas. 109 ; A. I R. 1933 Bom 262=35 Bom. L. R. 404.

Clause (d)—7 M. H C. H C R App. 8.

Clause (e)—15 C. 357 ; 16 C 267 ; 83 Ind. Cas. 650 ; 70 Ind. Cas. 606 ; 40 M 1009.

Revival of repealed enactments.

7. * (1) In any Act of the Governor General in Council or Regulation, made after the commencement of this Act, it shall be necessary, for the purpose of reviving either wholly or partially any enactment wholly or partially repealed, expressly to state that purpose.

* Compare s. 1. of the Interpretation Act, 1889, (52 & 53 Vict. c. 63).

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Notes—Where an Act repealing in whole or in part, a former Act, is itself repealed, the last repeal does not now revive the Act or provisions before repealed, unless words be added reviving them. 52 & 53 Vic. c. 63 s. 11. It is doubtful whether this rule applies to a repeal by implication—*Maxwell*, p. 728.

8. * (1) Where this Act, or any Act of the Governor General in Council or regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment, or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Construction of references to repealed enactments.

"(2) Where any Act of Parliament repeals and re-enacts, with and without modification, any provision of a former enactment, then references *in any Act of the Govornor General in Council or in any regulation* or instrument to the provision so repealed shall, unless a different intention appears, *be construed as references to the provision so "re-enacted"* †

9. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from," and for the purpose of including the last in a series of days or any other period of time, to use the word "to."

Commencement and determination of time.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Notes.—The general rule anciently seems to have been that both terms or endings of the period given for doing or suffering something were included; but when a penalty or forfeiture was involved in non-compliance with a condition within the given time, the time was reckoned by including one and excluding the other of the terminal days" *Maxwell*, p 605 Insurance against accident for 12 months from Nov. 24th, 1887 covers an accident occurring on Nov 24th 1888. *South Stafford Shire* v *The Sickness*, (1890) 60 L. J. Q B 47. An Act which received the Royal assent on the 9th August, 1899, gave a power to a company to take lands, which was to cease after 3 years from the passing of the Act *Held*, that the company can exercise that power on the 9th August, 1902, *Goldsmith* v. *West Metrop*, 72 L J. K. B. 931.

10. ‡ (1) Where, by any Act of the Governor General in Council or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Computation of time.

[illegible] y to any act or proceeding [illegible]

[illegible] vernor General in Council [illegible] January, 1887.

Notes—This section lays down the same rule as s. 4 of the Limitation Act. It would appear that it was the intention of the legislature that the rule should be of

[illegible] c. 63); [illegible] of 1878) [illegible]

universal application. 9 A. L. J. 439=14 Ind. Cas. 154. See also 15 Ind. Cas. 439; 15 C. L. J 505; 16 C. W. N. 721; 26 M. L. J. 23; 17 O. C. 254; 15 M. L T. 233: 87 Ind. Cas 560. Principle of s 10 may be applied to complaints under the Cattle Trespass Act, s. 20. A. I. R. 1929 Nag. 96=30 Cr. L. J. 125=113 Ind. Cas 285 Section 10 of the General Clauses Act is applicable to those cases where period of limitation has been given in the section and to the condition put in the decree. 41 A 47=16 A. L. J. 892=48. Ind. Cas. 353. Court open during vacation for receiving plaints etc., is deemed to be open. 70 Ind. Cas. 888=46 M. 938=44 M. L. J. 100 Subsequent repealment of Act does not affect rights or liabilities on date of transaction. A. I. R. 1933 Bom. 262=35 Bom. L. R. 404=144 Ind. Cas. 781.

Measurement of distances

11.* (1) In the measurement of any distance, for the purposes of any Act of the Governor General in Council or Regulation made, after the commencement of this Act, distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Duty to be taken *prorata* in enactments.

12. Where by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Gender and number.

13 In all Acts of the Governor General in Council and Regulations, unless there is anything repugnant in the subject or context—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and *vice versa.*

Notes.—*Vide* 24 C. L J. 382=21 C. W N. 74=35 Ind. Cas 925 S B.; 33 C 292=10 C. W N. 32; 63 Ind. Cas. 449.

References to the sovereign.

13A. "In all Acts of the Governor General in Council and Regulations, references to the Sovereign or to the Crown shall, unless a different intention appears, be construed as references to the Sovereign for the time being."†

Powers and Functionaries.

Powers conferred on the Government to be exercisable from time to time.

14. (1) Where, by any Act of the Governor General in Council or Regulation made after the commencement of this Act any power is conferred ‡ then "unless a different intention appears" † that power may be exercised from time to time as occasion requires.

(2) This section applies also to all Acts of the Governor General in Council and Regulations made on or after fourteenth day of January, 1887.

Power to appoint to include power to appoint *ex-officio*

15. Where, by any act of the Governor General in Council or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office. §

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* [illegible]

† [illegible]

‡ [illegible]

§ See similar provision in s. 39 of the Code of Criminal [illegible] 1898).

Power to appoint to include power to suspend or dismiss

16. Where by any Act of the Governor General in Council or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having "for the time being" * power to make the appointment shall also have power to suspend or dismiss any person appointed "whether by itself or by any other authority" † in exercise of that power.

Notes—The power of appointment includes the power of suspension and dismissal.

Substitution of functionaries.

17. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Notes —42 M 69=49 Ind. Cas 169.

Successors.

18. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors or any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Notes.—Where, by a notification published by the Government in the local official Gazette under and by virture of the powers vested in it by the Madras District Limits Act, I of 1865, the revenue was changed by the transfer of the area from one Revenue Division to another. *Held*, that on the publication of the notification in the Gazette, the Collector of the new Revenue Division acquired jurisdiction over all Revenue suits then pending in respect of holdings situated in or connected with the area so transferred, and that no formal transfer of the suits from the old to the new Court was necessary to give such jurisdiction. 2 L. W. 255=17 M. L. T. 190=28 Ind. Cas. 269

Official chiefs and subordinates.

19. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Provisions as to Orders, Rules, etc., made under Enactments.

Construction of notification, orders, etc., issued under enactments.

20.‡ Where, by any Act of the Governor General in Council or Regulation, a power to issue any "notification," § order, scheme, rule, form or bye-law, is conferred, then expressions used in the "notification," § order, scheme, rule, form or bye-law, if it is made

* Inserted by Act 18 of 1928. † Substituted by Act 18 of 1928.

‡ Compare s. 31 of the Interpretation Act, 1889 (52 & 53 Vict c. 63) and s. 10 of the Madras General Clauses Act (Mad. Act I of 1891).

§ Inserted by Act I of 1903.

after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

21.* Where, by any Act of the Governor-General in Council or Regulation, a power to "issue notifications," † orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any "notifications" † orders, rules or bye-laws so "issued."†

Power to make, to include power to add, to amend, vary or rescind, orders, rules or bye-laws.

Notes —59 Ind Cas. 153.

22.‡ Where, by any Act of the Governor General in Council or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws, or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

Making of rules or bye-laws, and issuing of orders between passing and commencement of enactment.

power to make bye-laws enact that any of the statute, and not repugnant to any law when confirmed by the executive, it is doubtful whether a Court would not be precluded from questioning the reasonableness of such bye-laws or whether they are *ultra vires*, unless it be some very extreme case. *Maxwell*, p 527 citing *Slattery* v. *Naylor*, 13 App. Cas. 446; *Institute of Patents Agents* v. *Lockwood*, (1894) A. C. 347; *Devonport Corp* v. *Tesor*, (1902) 71 L. J. Ch. 754; *A. G.* v. *Dorin*, (1912) 81 L. J. Ch. 225.

23. Where, by any Act of the Governor General in Council or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

Provisions applicable to making of rules or bye-laws after previous publication.

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Governor General in Council or the Local Government prescribes;

tion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

* Compare s. 32 (3) of the Interpretation Act, 1889 (52 & 53, Vict. c. 63).
† These words were substituted by Act I of 1903.
‡ Compare s. 37 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

(5) the publication in the Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

Continuation of "appointment, notification" orders, etc., issued under enactments repealed and re-enacted

24.* Where any Act of the Governor General in Council or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any "appointment, notification" † order, scheme, rule, form, or bye-law, "made or"† issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been "made or"† issued under the provisions so re enacted, unless and until it is superseded by any "appointment, notification,"† order, scheme, rule, form or bye-law "made or"† issued under the provisions so re-enacted; "and when any Act of the Governor-General in Council or Regulation, which by a notification under section 5 or 5A of the Scheduled Districts Act, 1874‡ or any law has been extended to any local area, has, by a subsequent notification, been withdrawn from and re extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section."§

Notes—Where a notification was made under s 3 of the Provincial Insolvency Act investing certain officers with powers, the same remains in force without fresh notification under the Act V of 1920, as s 3 has been re-enacted word for word in the new Act. 80 Ind. Cas. 858=1925 Cal. 335. Where the Government in 1885 [illegible] leases from registration and did not [illegible] assing of the Registration Act of 1908, [illegible] n view of the General Clauses Act, and an unregistered agricultural lease was admissible in evidence. 12 A. L. J. 792=28 Ind. Cas 577.

Miscellaneous.

Recovery of fines.

25. Sections 63 to 70 of the Indian Penal Code‖ and the provisions of the Code of Criminal Procedure¶ for the time being in force in relation to the issue and the execution of warrants, for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

Provisions as to offences punishable under two or more enactments.

26. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.**

Notes.—Where either of the two offences under the two different Acts are constituted by the same Acts, the offender cannot be punished for both. 1923 Lah. 342; 76 Ind. Cas. 689=25 Cr. L. J. 225; see also 10 S L. R. 162, 42 Ind. Cas 608. Separate sentences can be passed for sale and possession of opium. 44 Ind. Cas. 974=3. Pat. L T. 433; 1 P. L. J. 373=38 Ind. Cas. 433. Section 26 has no application if offences are distinct. 138 Ind. Cas. 491=1932 M. W. N. 860=33 Cr. L. J. 629=A. I. R. 1932 Mad. 537. Act or omission under s. 411, Penal Code, and Arms Act, s. 19 is not same. A. I. R. 1933 All. 461=1933 Cr. C. 761=1933 P. L. J. 523=34 Cr. L. J. 1018.

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* Compare s. 18 of the Madras General Clauses Act I of 1891.
† Inserted by Act I of 1903.
‡ Act VII of 1874.
§ Added by Act XVII of 1914.
‖ Act XLV of 1860
¶ See now s. 386 of the Code of Criminal Procedure Act V of 1898.
** As to definition of "offence" see *supra* sub-s. (37).

Meaning of service by post

27.* Where any Act of the Governor General in Council or Regulation made after the commencement of this Act, authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give," or "send," or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the documents, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Notes.—The word 'give' in connection with notices in s. 41 (2) C. P. Tenancy Act, is equivalent to 'serve.' *Dina* v. *Parusram*, 12 N. L. R. 42=22 Ind Cas. 991.

Citation of enactments.

28.† (1) In any Act of the Governor General in Council or Regulation, and in any rule, bye-law, instrument or document made under, or with reference to, any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon, or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any Act of the Governor General in Council or regulation made after the [illegible] of a portion of another e[illegible] be construed as including t[illegible] to as forming the beginni[illegible] in the description or citation.

Saving for previous enactments, rules and bye-laws.

29.‡ The provisions of this Act respecting the construction of Acts, Regulations, rules, or bye-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law made before the commencement of this Act, although the Act, Regulation, rule, or bye-law is continued or amended by an Act, Regulation, rule, or bye-law made after the commencement of this Act.

Application of Act to Ordinances.

30.§ In this Act, the expression "Act of the Governor General in Council," wherever it occurs, except in section 5, and the word "Act" in clauses (9), (12), (38), (48) and (50) of section 3 and in section 25 shall be deemed to include an Ordinance made and promulgated by the Governor-General under section 23 of the Indian Councils Act 1861‖ "or section 72 [illegible]

[illegible]

C. 545=1933 Cr. C 860=A. I. R. 1933 Cal. 516

Application of Acts made by the Governor-General.

30A.** In this A[illegible] Act made by the Governor-General under section 67 B of the Government of India Act.

[illegible] Vict c. 63). [illegible] &53 Vict. c. 63). Short titles [illegible] of the Governor General in [illegible] lian Short Titles Act (XIV of 1897).

‡ Compare s. 40 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

§ Added by Act XVII of 1914. ‖. 24 & 25 Vict. c. 97.

¶ The words within quotations have been added by Act 24 of 1917.

** Section 30 A has been added by Act XI of 1923.

†† Substituted by Act 18 of 1928.

31. In any enactment made by any authority in British India before the date on which section 3 of the Government of India Act, 1919, comes into operation, and in any rule, order, notification, scheme, bye-law or other document made under or with reference to any such enactment, any reference by whatever form of words to an authority authorized by law, at the time the enactment was made to administer executive Government in any part of British India shall, where a corresponding new authority has been constituted by the Government of India Act, 1919, be construed for all purposes, after the above mentioned date, as a reference to such new authority.

Construction of references to Local Government of a Province.

THE SCHEDULE.

ENACTMENTS REPEALED.

[*Repealed by Act I of 1903*].

GOVERNMENT OF INDIA ACT, 1935.

[25 & 26 GEO. 5 CH. 42].

ARRANGEMENT OF SECTIONS.

PART I.

INTRODUCTORY.

CHAPTER 42.

An Act to make further provision for the government of India.

[2nd August, 1935.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

INTRODUCTORY.

Short title.

1. This Act may be cited as the Government of India Act, 1935.

Government of India by the Crown.

2.—(1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty.

Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of those functions of the Crown.

(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State in Council, the Governor-General, the Governor General in Council, any Governor or any Local Government, whether by delegation from His Majesty or otherwise

The Governor General of India and His Majesty's Representative as regards relations with Indian States

3. (1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(a) all such powers and duties as are conferred or imposed on him by or under this Act, and

(b) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him

(2) His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill [illegible] the said offices.

The Commander-in-Chief in India.

4. There shall be a Commander-in-Chief of His Majesty's Forces in India appointed by Warrant under the Royal Sign Manual.

PART II.

THE FEDERATION OF INDIA.

CHAPTER I.

ESTABLISHMENT OF FEDERATION AND ACCESSION OF INDIAN STATES.

Proclamation of Federation of India.

5. (1) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India,—

(a) the Provinces hereafter called Governors' Provinces; and

(b) the Indian States which have acceded or may thereafter accede to the Federation;

and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners' Provinces.

(2) The condition referred to is that States—

(a) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State; and

(b) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one half of the total population of the States as so ascertained,

have acceded to the Federation.

Accession of Indian States.

6.—(1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

(a) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested ir [illegible]

(b) [illegible] s given within his State to [illegible] therein by virtue of his Instrument of Accession:

Provided that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws f [illegible] of the Federal executive autho- [illegible]

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by His Majesty or any Federal authority in relation to his State.

(4) Nothing in his section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instrument unless he con-

siders it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act:

Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the Instrument.

(5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal authority in relation to the State.

(6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the ruler of the State whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

(8) *In this Act a State which has acceded to the Federation is referred* to as a Federated State, and the Instrument by virtue of which a State has so *acceded, construed together with any supplementary Instrument executed* under this section, is referred to as the Instrument of Accession of that State.

(9) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by His Majesty under this section, copies of the Instrument and of His Majesty's Acceptance thereof shall be laid before Parliament, and all Courts shall take judicial notice of every such Instrument and Acceptance.

CHAPTER II.

The Federal Executive.

The Governor-General.

Functions of Governor-General.

7. (1) Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him, *but nothing in this section shall prevent the Federal Legislature from conferring* functions upon subordinate authorities, or be deemed to transfer to the Governor-General any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority

(2) References in this Act to the functions of the Governor-General shall be construed as references to his powers and duties in the exercise of the executive authority of the Federation and to any other powers and duties conferred or imposed on him as Governor-General by or under this Act, other than powers exercisable by him by reason that they have been assigned to him by His Majesty under Part I of this Act.

(3) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor-General and the provision

to be made for enabling him to discharge conveniently and with dignity the duties of his office.

Extent of executive authority of the Federation.

8. (1) Subject to the provisions of this Act, the executive authority of the Federation extends—

(a) to the matters with respect to which the Federal Legislature has power to make laws;

(b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment;

(c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas:

Provided that—

(i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws;

(ii) the said authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State;

(iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he is either a subject of His Majesty or a native of India or of territories adjacent to India; and

(iv) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(2) The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has power to make laws for that State except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.

Administration of Federal Affairs.

Council of ministers.

9. (1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

Provided that nothing in this sub-section shall be construed as preventing the Governor-General from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor-General in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor General is by or under this Act required to act in his discretion or to exercise his indivi[illegible] General in his discretion shall [illegible] the Governor-General shall not [illegible] ought or ought not to have act[illegible] have exercised his individual judgment.

Other provisions as to ministers.

10. (1) The Governor-General's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

(2) A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor General :

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any court.

(5) The functions of the Governor General with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

Provisions as to defence, ecclesiastical affairs, external affairs and the tribal areas.

11. ( ) The functions of the Governor-General with respect to defence and ecelesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to the tribal areas shall be similarly exercised.

[illegible] functions the Governor-General [illegible] number, whose salaries and con- [illegible] ribed by His Majesty in Council.

Special responsibilities of Governor-General

12. (1) In the exercise of his functions the *Governor-General shall have the following special* responsibilities, that is to say,—

(*a*) the prevention of any grave menace to the peace or tranquillity of India or any part thereof ;

(*b*) the safeguarding of the financial stability and credit of the Federal Government ;

(*c*) the safeguarding of the legitimate interests of minorities ;

[illegible]

provisions of chapter III of Part V of this Act are designed to secure in relation to legislation ;

(*f*) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment ;

(*g*) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ; and

(*h*) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If and in so far as any special responsibility of the Governor General is involved, he shall in the exercise of his functions exercise his individual judgment as to the action to be taken.

Provisions as to Instrument of Instructions.

13. (1) The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including an Instrument amending or revoking an Instru previously issued) which it is proposed to r

mend His Majesty to issue to the Governor-General and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.

by the Governor-General shall not be done otherwise than in accordance him.

Superintendence of Secretary of State.

14. (1) In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular ime be given to him by, the Secretary by the Governor-General shall not be done otherwise than in accordance

(2) Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.

Financial adviser to Governor-General.

15. (1) The Governor-General may appoint a person to be his financial adviser.

(2) It shall be the duty of the Governor-General's financial adviser to assist by his advice the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon any matter relating to finance with respect t

(3) The Governor-General's finar pleasure of the Governor-General, and adviser and the numbers of his sta such as the Governor-General may determine.

(4) The powers of the Governor-General with respect to the appointment and dismissal of a financial adviser, and with respect to the determination of his salary and allowances and the numbers of his staff and their conditions of service, shall be exercised by him in his discretion:

Provided that, if the Governor-General has determined to appoint a financial adviser, he shall, before making any appointment other than the first appointment, consult his ministers as to the person to be selected.

Advocate-General for Federation.

16. (1) The Governor-C eing a person the Federal or the Federation.

(2) It shall be the duty of the Advocate General to give advice to the

in all courts in British India and, in a case in which federal interests are concerned, in all courts in any Federated State.

(3) The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General may determine.

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor-General shall exercise his individual judgment.

Conduct of business of Federal Government.

17. (1) All executive action of the Federal Government shall be expressed to be taken in the name of the Governor-General.

(2) Orders and other instruments made and executed in the name of the Governor-General shall be authenticated in such manner as may be specified in rules to be made by the Governor-General, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor-General.

(3) The Governor-General shall make rules for the more convenient transaction of the business of the Federal Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor-General is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor-General all such information with respect to the business of the Federal Government as may be specified in the rules, or as the Governor-General may otherwise required to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor-General, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor-General, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor-General.

(5) In the discharge of his functions under sub-sections (2), (3) and (4) of this section the Governor-General shall act in his discretion after consultation with his ministers

CHAPTER III.

THE FEDERAL LEGISLATURE.

General

Constitution of the Federal Legislature.

18. (1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as "the Federal Assembly").

(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

(3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.

(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.

(5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

Sessions of the Legislature, prorogation and dissolution.

19. (1) The Chambers of the Federal Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this section, the Governor-General may in his discretion from time to time—

(*a*) summon the Chambers or either Chamber to meet at such time and place as he thinks fit ;

(*b*) prorogue the Chambers ;

(*c*) dissolve the Federal Assembly.

(*d*) The Chambers shall be summoned to meet for their first session on a day not later than such day as may be specified in that behalf in His Majesty's Proclamation establishing the Federation.

Right of Governor-General to address, and send messages to, Chambers.

20. (1) The Governor-General may in his discretion address either Chamber of the Federal Legislature or both Chambers assembled together, and for that purpose require the attendance of members.

(2) The Governor-General may in his discretion send messages to either Chamber of the Federal Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

21. Every minister, every counsellor and the Advocate-General shall have

Rights of ministers, counsellors and Advocate-General as respects Chambers.

but shall not by virtue of this section be entitled to vote.

22. (1) The Council of State shall as soon as may be choose two members of the Council to be respectively President and Deputy-President thereof and, so often as the office of President or Deputy-President becomes vacant, the Council shall choose another member to be President or Deputy-President, as the case may be,

Officers of Chambers.

(2) A member holding office as President or Deputy-President of the Council of State shall vacate his office if he ceases to be a member of the Council, may at any time resign his office by writing under his hand addressed to the Governor-General, and may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council ; but no resolution for the purpose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

(3) While the office of President is vacant, the duties of the office shall be performed by the Deputy-President, or, if the office of Deputy President is also vacant, by such member of the Council as the Governor-General may in his discretion appoint for the purpose, and during any absence of the President from any sitting of the Council the Deputy-President or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as President.

(4) There shall be paid to the President and the Deputy-President of the Council of State such salaries as may be respectively fixed by Act of the Federal Legislature, and, until provision in that behalf is so made, such salaries as

in relation to the of State with the the titles "President" and "Deputy-President" respectively, and with the substitution of references to the Assembly for references to the Council :

Provided that, without prejudice to the provisions of subsection (2) of this section as applied by this subsection, whenever the Assembly is dissolved, the Speaker shall not vacate this office until immediately before the first meeting of the Assembly after the dissolution.

Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum.

23. (1) Save as provided in the last preceding section, all questions at any sitting or joint sitting of the Chambers shall be determined by a majority of votes of the members present and voting, other than the President or Speaker or person acting as such.

The President or Speaker or person acting as such shall not vote in the first instance but shall have and exercise a casting vote in the case of an equality of votes.

(2) A Chamber of the Federal Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings

(3) If at any time during a meeting of a Chamber less than one-sixth of the total number of members of the Chamber are present, it shall be the duty of the President or Speaker or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members are present.

Provisions as to Members of Legislature.

Oath of members.

24. Every member of either Chamber shall, before taking his seat, make and subscribe before the Governor-General, or some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case.

Vacation of seats.

25. (1) No person shall be a member of both Chambers, and rules made by the Governor-General exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(2) If a member of either Chamber—

(*a*) becomes subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section ; or

(*b*) by writing under his hand addressed to the Governor-General resigns his seat,

his seat shall thereupon become vacant :

(3) If for sixty days a member of either Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant :

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

Disqualifications for membership.

26. (1) A person shall be disqualified for being chosen as, and for being, a member of *either Chamber*—

(*a*) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder ;

(*b*) [illegible] by a competent court ;

(*c*) [illegible]

(*d*) [illegible] *the Federation, he has* been co [illegible] the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or ill

gal practice relating to elections which has been declared by Order in Council or by an Act of the Federal Legislature to be an offence or practice entailing disqualification for membership of the Legislature unless such period has elapsed as may be specified in that behalf by the provisions of that Order or Act;

(*e*) if, whether before or after the establishment of the Federation, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor-General, acting in his discretion, may allow in any particular case, has elapsed since his release;

(*f*) if having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any

not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor-General, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, b
sentence, becomes disqualified
section (1) of this section is at
Legislature, his seat shall, notw
section, not become vacant by t
have elapsed from the date the
petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that—

(*a*) he is a minister either for the Federation or for a Province; or

(*b*) while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of

Penalty for sitting and voting when not qualified, or when disqualified.

27. If a person sits or votes as a member qualified or is of, or when he is prohibited from so doing by the provisions of subsection (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

Privileges &c, of members.

28. (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of any thing said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings.

(2) In other respects, the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

(3) Nothing in any existing Indian Act, and, notwithstanding anything in foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both chambers sitting together, or on any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of the committee so to do:

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor-General exercising his individual judgment.

(5) The provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

Salaries and allowances of members

29. Members of either Chamber shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Federal Legislature and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of the establishment of the Federation applicable in the case of members of the Legislative Assembly of the Indian Legislature.

Legislative Procedure.

Provisions as to introduction and passing of Bills.

30. (1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber.

(2) Subject to the provisions of the next succeeding section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers.

[illegible] Assembly.

Joint sittings of both Chambers in certain cases.

31 (1) If after a Bill has been passed by one Chamber and transmitted to the other Chamber—

(a) the Bill is rejected by the other Chamber; or

(b) the Chambers have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent,

the Governor General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by

gal practice relating to elections which has been declared by Order in Council or by an Act of the Federal Legislature to be an offence or practice entailing disqualification for membership of the Legislature unless such period has elapsed as may be specified in that behalf by the provisions of that Order or Act;

(*e*) if, whether before or after the establishment of the Federation, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor-General, acting in his discretion, may allow in any particular case, has elapsed since his release;

(*f*) if having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor-General, acting in his discretion, has removed the disqualification:

Provided that a disqualification under paragraph (*f*) of this sub section shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor-General, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, b [illegible] sentence, becomes disqualified [illegible] section (1) of this section is at [illegible] Legislature, his seat shall, notwithstanding [illegible] section, not become vacant by reason of t [illegible] have elapsed from the date thereof or, if [illegible] petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that—

(*a*) he is a minister either for the Federation or for a Province; or

(*b*) while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights as such.

Penalty for sitting and voting when not qualified, or when disqualified.

27. If a person sits or votes as a member of either Chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of subsection (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

Privileges &c., of members.

28. (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of any thing said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any [illegible]

(2) In other re [illegible] the Chambers shall be such as may from [illegible] e Federal Legislature and, until so define [illegible] before the establishment of the Federation enjoyed by members of the Indian Legislature.

(3) Nothing in any existing Indi [illegible] foregoing provisions of this section, [illegible] conferring, or empowering the Feder[illegible] Chamber or on both chambers sitting together, or on any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of the committee so to do:

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such [illegible] or have been, in the service of the Crown in Indi[illegible] matter from disclosure, as may be made by the [illegible] his individual judgment.

(5) The provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

Salaries and allowances of members

29. Members of either Chamber shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Federal Legislature and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of the establishment of the Federation applicable in the case of members of the Legislative Assembly of the Indian Legislature.

Legislative Procedure.

Provisions as to introduction and passing of Bills.

30. (1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber.

(2) Subject to the provisions of the next succeeding section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers.

(4) A Bill pending in the Council of State which has not been passed by the Federal Assembly shall not lapse on a dissolution of the Assembly

(5) A Bill which is pending in the Federal Assembly or which having been passed by the Federal Assembly is pending in the Council of State shall, subject to the provisions of the next succeeding section, lapse on a dissolution of the Assembly.

Joint sittings of both Chambers in certain cases.

31. (1) If after a Bill has been passed by one Chamber and transmitted to the other Chamber—

(*a*) the Bill is rejected by the other Chamber; or

(*b*) the Chambers have finally disagreed as to the amendments to be made in the Bill; or

(*c*) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent,

the Governor General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by

public notification if they are not . . . to meet in a joint sitting for the purpos . . . :

Provided that, if it appears to . . . relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the Bill and notwithstanding that the said period of six months has not elapsed, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay.

In reckoning any such period of six months as is referred to in this subsection, no account shall be taken of any time during which the Legislature is prorogued or during which both Chambers are adjourned for more than four days.

(2) Where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the Bill, but the Governor-General may at any time in the next session after the expiration of six months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and, if he does so, the Chambers shall meet accordingly:

Provided that, if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso to subsection (1) of this section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session.

(3) The functions of the Governor-General under the provisos to the two last preceding subsections shall be exercised by him in his discretion.

(4) If at the joint sitting of the two Chambers the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers:

Provided that at a joint sitting—

(a) if the Bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed, and the decision of the person presiding as to the amendments which are admissible under this subsection shall be final

(5) A joint sitting may be held under this section and a Bill passed thereat notwithstanding that a dissolution of the Assembly has intervened since the Governor-General notified his intention to summon the Chambers to meet therein.

Assent to Bills and power of Crown to disallow Acts.

32. (1) When a Bill has been passed by the Chambers, it shall be presented to the Governor-General, and the Governor-General shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure:

Provided that the Governor-G . . . the Chambers with a message . . . any specified provisions thereof a . . . of introducing any such amendme . . . the Chambers shall reconsider the Bill accordingly.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented thereto.

(3) Any Act assented to by the Governor General may be disallowed by His Majesty within twelve months from the day of the Governor-General's assent, and where any Act is so disallowed the Governor General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.

Procedure in Financial matters.

Annual financial statement

33. (1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement oft he estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the "annual financial statement."

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(*a*) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation ; and

(*b*) the sums required to meet other expenditure proposed to be made from the revenues of the Federation,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expendituae shall be expenditure charged on the revenues of the Federation ,—

(*a*) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council ;

(*b*) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ;

(*c*) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the advocate general, of chief commissioners, and of the staff of the financial adviser ,

(*d*) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court ;

(*e*) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his descretion : provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charges ;

(*f*) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States ,

(*g*) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas ;

(*h*) any sums required to satisfy any judgment, decree or award of Court or arbitral tribunal ;

(*i*) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.

[illegible] ıy proposed expenditure falls within a class of [illegible] ıues of the Federation shall be decided by the [illegible]

Procedure in Legislature with respect to estimates.

34. (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this subsection shall be construed [illegible] ıny of those [illegible] paragraph [illegible]

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein:

Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and, where the Assembly have assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not, being a greater amount than that originally demanded, as may bes pecified in the direction.

(3) If the Chambers differ with respect to any demand the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

Authentication of schedule of authorised expenditure.

35. (1) The Governor-General shall authenticate by his signature a schedule specifying—

(*a*) the grants made by the Chambers under the last preceding section;

(*b*) the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Legislature:

Provided that, if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not e ceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before both Chambers but shall not be open to discussion or vote therein.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

Supplementary statements of expenditure.

36. If in respect of any financial year further expenditure from the revenues of the Federation becomes necessary over and above the [illegible] for that year, [illegible] be laid before both Chambers of the Federal Legislature a supp[illegible] nent

showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Special provisions as to financial Bills.

37. (1) A Bill or amendment making provisions—

(*a*) for imposing or increasing any tax ; or

[illegible] reve- [illegible] , [illegible] rnor-General, and a Bill making such provision shall not be introduced in the Council of State.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Federation shall not be passed by either Chamber unless the Governor-General has recommended to that Chamber the considration of the Bill.

Procedure Generally.

Rules of procedure.

38.—(1) Each Chamber *of the Federal Legislature may make rules for* regulating, subject to the provisions of this Act, *their procedure and the conduct of their business:*

Provided that as regards each Chamber the Governor-General shall in his discretion, after consultation with the President or the Speaker, as the case may be, make rules—

(*a*) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment ;

(*b*) for securing the timely completion of financial business ;

(*c*) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State, unless the Governor-General in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked ;

(*d*) for prohibiting, save with the consent of the Governor-General in his discretion,—

(i) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor General and any foreign State or Prince ; or

(ii) the discussion except in relation to estimates of expenditure, of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area ; or

(iii) *the discussion of, or the asking of questions on, any action taken* in his discretion by Governor General in relation to the affairs of a Province ; or

(iv) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof ;

and, if and in so far as any rule so made by the Governor-General is inconsistent with any rule made by a Chamber, the rule made by the Governor General shall prevail.

(2) The Governor General, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor-General in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing ord [illegible] eration with respect [illegible] Federal Legislature s [illegible] therein by the Governor-General in his discretion.

(4) At a joint sitting of the two Chambers the President of the Council of State, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

English to be used in the Federal Legislature.

39. All proceedings in the Federal Legislature shall be conducted in the English language:

Provided that the rules of procedure of each Chamber and the rules with respect to joint sittings shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

Restrictions on discussion in the Legislature.

40. (1) No discussion shall take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties.

In this sub section the reference to a High Court shall be construed as including a reference to any court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.

(2) If the Governor-General in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Federal Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would effect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.

Courts not to inquire into proceedings of the Legislature.

41. (1) The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.

CHAPTER IV.

Legislative Powers of Governor-General.

Power of Governor-General to promulgate Ordinances during recess of Legislature.

42. (1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Provided that the Governor-General—

(*a*) shall exercise his individual judgment as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature ; and

(*b*) shall not, without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(*a*) shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions ;

(*b*) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General ; and

(*c*) may be withdrawn at any time by the Governor-General.

(3) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void

Power of Governor-General to promulgate ordinances at any time with respect to certain subjects.

43. (1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under the section shall continue in operation for such period not exceeding six months as may he specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(*a*) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General ,

(*b*) may be withdrawn at any time by the Governor-General ; and

(*c*) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament

(4) *If and so far as an ordinance under this section makes any provision* which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Power of Governor General in certain circumstances to enact Acts.

44. (1) If at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he

message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

(*a*) enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary ; or

(*b*) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Gonernor-General takes such action as is mentioned in paragraph (*b*) of the preceding subsection, he may at any time after the expiration of one month enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(4) Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

CHAPTER V.

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY.

Power of Governor-General to issue Proclamations

45. (1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

(*a*) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion ;

(*b*) assume to himself, all or any of the powers vested in or exercisable by any Federal body or authority,

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority :

Provided that nothing in this subsection shall authorise the Governor-General to assume to himself any of the or powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation issued under this section—

(*a*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament ;

(*b*) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months :

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate.

(4) If at any time the government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation

issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this subsection shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion

PART III.

THE GOVERNOR'S PROVINCES.

CHAPTER I.

THE PROVINCES

Governors' Provinces.

46. (1) Subject to the provisions of the next succeeding section with respect to Berar, the following shall be Governors Provinces, that is to say, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, *Assam, the North-West Frontier Province, Orissa, Sind, and such other* Governors' Provinces as may be created under this Act.

(2) Burma shall cease to be part of India.

(3) In this Act the expression "Province" means, unless the context otherwise requires, a Governor s Province, and "Provincial" shall be construed accordingly.

Provisions as to Berar.

47. Whereas certain territory (in this Act referred to as "Berar") is under the sovereignty of His Exalted Highness the Nizam of Hyderabad, but is at the date of the passing of this Act, by virtue of certain agreements subsisting between His Majesty and His Exalted Highness, administered together with the Central Provinces:

And whereas it is in contemplation that an agreement shall be concluded between His Majesty and His Exalted Highness whereby, notwithstanding the continuance of the sovereignty of His Exalted Highness over Berar, the Central Provinces and Berar may be governed together as one Governor's Province under this Act by the name of the Central Provinces and Berar;

Now, therefore,—

(1) While any such agreement is in force—

(*a*) Berar and the Central Provinces shall, notwithstanding the continuance of the sovereignty of His Exalted Highness, be deemed to be one Governor's Province by the name of the Central Provinces and Berar;

(*b*) any reference in this Act or in any other Act to British India shall be construed as a reference to British India and Berar, and any reference in this Act to subjects of His Majesty shall, except for the purposes of any oath of allegiance, be deemed to include a reference to Berari subjects of His Exalted Highness;

(*c*) any provision made under this Act with respect to the qualifications of the voters for the Provincial Legislature of the Central Provinces and Berar or the voters for the Council of State, shall be such as to give effect to any provisions with respect to those matters contained in the agreement:

(2) If no such agreement is cencluded, or if such an agreement is concluded but subsequently ceases to have effect, references in this Act to the Central Provinces and Berar shall be construed as references to the Central Provinces and His Majesty in Council may make such consequential modifications in the provisions of this Act relating to the Central Provinces as he thinks proper.

CHAPTER II.

The Provincial Executive.

The Governor.

Appointment of Governor.

48. (1) The Governor of a Province is appointed by His Majesty by a Commission under the Royal Sign Manual.

(2) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

Executive authority of Province

49. (1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing

Provincial Legislature from
or be deemed to transfer to .
ting Indian law on any court, j

(2) Subject to the provis
Province extends to the matters with respect to which the Legislature
Province has power to make laws.

Administration of Provincial Affairs.

Council of ministers.

50. (1) There shall be a council of ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion :

Provided that nothing in this subsection shall be construed as preventing the Governor from exercising his individual judgment in any case whereby or under this Act he is required so to do.

(2) The Governor in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment,
tion shall be final, and the validity o
be called in question on the ground
his discretion, or ought or ought not to have exercised his individual judgment.

Other provisions as to ministers.

51. The Governor's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold officer during his pleasure.

(2) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor :

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any court.

(5) The functions of the Governor under this section with respect to the *choosing and summoning and the dismissal of ministers, and with respect to the* determination of their salaries, shall be exercised by him in his discretion.

Special responsibilities of Governor.

52. (1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say :—

(a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof ;

(b) the safeguarding of the legitimate interests of minorities ;

(c) *the securing to, and to the dependants of, persons who are or have been* members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests ;

(d) the securing in the sphere of executive action of the purposes which the provisions of chapter III of Part V of this Act, are designed to secure in relation to legislation ;

(e) the securing of the peace and good government of areas which by or under the provisions of this Part of this Act are declared to be partially excluded areas ;

(f) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof , and

(g) *the securing of the execution of orders or directions lawfully issued to* him under Part VI of this Act by the Governor General in his discretion.

(2) The Governor of the Central Provinces and Berar shall also have the special responsibility of securing that a reasonable share of the revenues of the Province is expended in or for the benefit of Berar, the Governor of any Pro*vince which includes an excluded area shall also have the special responsibility* of securing that the due discharge of his functions in respect of excluded areas is not prejudiced or impeded by any course of action taken with respect to any other matter, any Governor who is discharging any functions as agent for the *Governor-General shall also have the special responsibility of securing* that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter, and the Governor of Sind shall also have the special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.

(3) If and in so far as any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken.

Provisions as to Instrument of Instructions

53. (1) The Secretary of State shall lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed *to recommend His* Majesty to issue to the Governor of a Province, and no further proceedings shall be taken *in relation thereto except in pursuance* of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.

(2) The validity of anything done by the Governor of a Province shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

Superintendence of Governor-General.

54.—(1) In so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such

particular directions, if any, as may from time to time be given to him by, the Governor General in his discretion, but the validity of anything done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section, the Governor General shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty.

Advocate-General for Province.

55. (1) The Governor of each Province shall appoint a person, being a person qualified to be appointed a judge of a High Court, to be Advocate-General for the Province.

(2) It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate General and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment.

Provisions as to police rules.

56. Where it is proposed that the Governor of a Province should by virtue of any powers vested in him make or amend, or approve the making or amendment of, any rules, regulations or orders relating to any police force, whether civil or military, he shall exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organisation or discipline of that force.

Provisions as to crimes of violence intended to overthrow Government.

57. (1) If it appears to the Governor of a Province that the peace or tranquillity of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Gover- [illegible] law established, the Go- [illegible] case require him so to do [illegible] t that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion and, until ot [illegible] nor, those functions sha [illegible]

(2) While any sucl [illegible] official to speak in and [illegible] and any official so authc [illegible] dings of the Chamber or Chambers of the Legislature, any joint sitting [illegible] Chambers, and any committee of the Legislature of which he may be named a member by the Governor, but shall not be entitled to vote.

(3) The functions of the Governor under this section shall be exercised by him in his discretion.

(4) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.

Sources of certain information not to be disclosed.

58. The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been or may be obtained with respect to the operations of persons

commit, such crimes as
disclosed or given—
ovince to another member of that force except in accordance with directions of the Inspector General of Police or Commissioner of Police, as the case may be, or to any other person except in accordance with directions of the Governor in his discretion; or

(*b*) by any other person in the service of the Crown in the Province to any person except in accordance with directions of the Governor in his discretion.

Conduct of business of Provincial Government.

59. (1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Provincial Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.

(5) In the discharge of his functions under subsections (2), (3) and (4) of this section the Governor shall act in his discretion after consultation with his ministers

CHAPTER III.

THE PROVINCIAL LEGISLATURE.

General.

Constitution of Provincial Legislatures.

60. (1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and—

(*a*) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers,

(*b*) in other Provinces, one Chamber.

(2) Where there are two Chambers of a Provincial Legislative, they shall be known respectively as the Legislative Council and the Legislative Assembly, and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly.

Composition of Chambers of Provincial Legislatures.

61 (1) The composition of the Chamber or Chambers of the Legislature of a Province shall be such as is specified in relation to that Province in the Fifth Schedule to this Act.

(2) Every Legislative Assembly of every Province, unless sooner dissol-
shall continue for five years from the date appointed for their first meeting
no longer, and the expiration of the said period of five years shall ope
a dissolution of the Assembly.

(3) Every Legislative Council shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provision in that behalf made in relation to the Province under the said Fifth Schedule.

Sessions of the Legislature, prorogation and dissolution.

62. (1) The Chamber or Chambers of each Provincial Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this section, the Governor may in his discretion from time to time—

(*a*) summon the Chambers or either Chamber to meet at such time and place as he thinks fit;

(*b*) prorogue the Chamber or Chambers;

(*c*) dissolve the Legislative Assembly.

(3) The Chamber or Chambers shall be summoned to meet for the first session of the Legislature on a day not later than six months after the commencement of this Part of this Act.

Right of Governor to address, and send messages to, Chambers.

63. (1) The Governor may in his discretion address the Legislative Assembly or, in the case of a Province having a Legislative Council, either Chamber of the Provincial Legislature or both Chambers assembled together, and may for that purpose require the attendance of members.

(2) The Governor may in his discretion send messages to the Chamber or Chambers of the Provincial Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

Rights of ministers and Advocate-General as respects Chambers.

64. Every minister and the Advocate-General shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the Province or, in the case of a Province having a Legislative Council, both Chambers and any joint sitting of the Chambers, and to speak in, and otherwise take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote.

Officers of Chambers.

65. (1) Every Provincial Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

(2) A member holding office as Spea
shall vacate his office if he ceases to be
time resign his office by writing under h
may be removed from his office by a
majority of all the then members of the A
pose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

(3) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may in his discretion

appoint for the purpose, and during any absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

(4) There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly such salaries as may be respectively fixed by Act of the Provincial Legislature, and until provision in that behalf is so made, such salaries as the Governor may determine.

(5) In the case of a Province having a Legislative Council, the foregoing provisions of this section (other than the proviso to subsection (2) thereof) shall apply in relation to the Legislative Council as they apply in relation to the Legislative Assembly, with the substitution of the titles "President" and "Deputy President" for the titles "Speaker" and "Deputy Speaker" respectively, and with the substitution of references to the Council for references to the Assembly.

Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum.

66. (1) Save as in this Act otherwise expressly provided, all questions in a Chamber, or a joint sitting of two Chambers, of a Provincial Legislature shall be determined by a majority of votes of the members present and voting, other than the Speaker or President, or person acting as such.

The Speaker or President, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A Chamber of a Provincial Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in a Provincial Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a Provincial Legislative Assembly less than one-sixth of the total number of members of the Chamber are present, or if at any time during a meeting of a Provincial Legislative Council less than ten members are present, it shall be the duty of the Speaker or President or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members, or, as the case may be, at least ten members, are present.

Provisions as to Members of Legislatures.

Oath of members.

67. Every member of a Provincial Legislative Assembly or Legislative Council shall, before taking his seat, make and subscribe before the Governor, or some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case.

Vacation of seats

68. (1) No person shall be a member of both Chambers of a Provincial Legislature, and rules made by the Governor exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(2) No person shall be a member both of the Federal Legislature and of a Provincial Legislature and if a person is chosen a member both of the Federal Legislature and of a Provincial Legislature, then, at the expiration of such period as may be specified in rules made by the Governor of the Province exercising his individual judgment, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Federal Legislature.

(3) If a member of a Chamber—

(*a*) becomes subject to any of the disqualifications mentioned in section (1) of the next succeeding section ; or

(*b*) by writing under his hand addressed to the Governor resigns his seat, his seat shall thereupon become vacant.

(4) If for sixty days a member of a Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant :

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

Disqualifications for membership.

69. (1) A person shall be disqualified for being chosen as, and for being, a member of a Provincial Legislative Assembly or Legislative Council—

(*a*) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder ;

(*b*) if he is of unsound mind and stands so declared by a competent court;

(*c*) if he is an undischarged insolvent ;

(*d*) if, whether before or after the commencement of this Part of this Act, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council, or by an Act of the Provincial Legislature, to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf in the provisions of that Order or Act ;

(*e*) if, whether before or after the commencement of this Part of this Act, he has been convicted of any other offence by a Court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor, acting in his discretion, may allow in any particular case, has elapsed since his release ;

(*f*) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed [illegible] lged or the Governor, [illegible] of this subsection shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of a Chamber of a Provincial Legislature while he is serving a sentence of transportation or of imprisonment for a criminal offen[illegible]

(3) Where a person who, [illegible] sentence, becomes disqualified by [illegible] subsection (1) of this section is at [illegible] a Chamber, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this subsection, he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that he is a minister either for the Federation or for a Province.

Penalty for sitting and voting when not qualified, or when disqualified

70. If a person sits or votes as a member of a Provincial Legislative Assembly or Legislative Council when he is not qualified or is disqualified for membership thereof or when he is prohibited from so doing by the provisions of subsection (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Province.

Privileges, &c. of members.

71. (1) Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings

(2) In other respects the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature, and, until so defined, shall be such as were immediately before the commencement of this Part of this Act enjoyed by members of the Legislative Council of the Province.

(3) Nothing in any existing Indian law, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering any Legislature to confer, on a Chamber thereof or on both Chambers sitting together or any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Provincial Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of a committee so to do :

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Gover

(5) *The provisions of subsections*

relation to persons who by virtue of

otherwise take part in the proceedings o

members of the Legislature.

Salaries and allowances of members.

72. Members of Provincial Legislative Assemblies and Legislative Councils shall be entitled to receive such salaries and allowances as may from time to time be determind by Act of the Provincial Legislature, and until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Part of this Act applicable in the case of members of the Legislative Council of the Province.

Legislative Procedure.

Introduction of Bills, &c.

73. (1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber of the Legislature of a Province which has a Legislative Council.

(2) A Bill pending in the Legislature of a Province shall not lapse by reason of the prorogation of the Chamber or Chambers thereof.

(3) If a member of a Chamber—

(*a*) becomes subject to any of the disqualifications mentioned in section (1) of the next succeeding section; or

(*b*) by writing under his hand addressed to the Governor resigns his seat, his seat shall thereupon become vacant.

(4) If for sixty days a member of a Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

Disqualifications for membership

69. (1) A person shall be disqualified for being chosen as, and for being, a member of a Provincial Legislative Assembly or Legislative Council—

(*a*) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder;

(*b*) if he is of unsound mind and stands so declared by a competent court;

(*c*) if he is an undischarged insolvent;

(*d*) if, whether before or after the commencement of this Part of this Act, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council, or by an Act of the Provincial Legislature, to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf in the provisions of that Order or Act;

(*e*) if, whether before or after the commencement of this Part of this Act, he has been convicted of any other offence by a Court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor, acting in his discretion, may allow in any particular case, has elapsed since his release;

(*f*) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed [illegible] lged or the Governor,

[illegible] of this subsection shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of a Chamber of a Provincial Legislature while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (*d*) or paragraph (*e*) of subsection (1) of this section is at the date of the disqualification a member of a Chamber, his seat shall, notwithstanding anything in this or the last preceding [illegible] until three months

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that he is a minister either for the Federation or for a Province.

Penalty for sitting and voting when not qualified, or when disqualified

70. If a person sits or votes as a member of a Provincial Legislative Assembly or Legislative Council when he is not qualified or is disqualified for membership thereof or when he is prohibited from so doing by the provisions of subsection (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Province.

Privileges, &c. of members.

71. (1) Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings.

(2) In other respects the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature, and, until so defined, shall be such as were immediately before the commencement of this Part of this Act enjoyed by members of the Legislative Council of the Province.

(3) Nothing in any existing Indian law, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering any Legislature to confer, on a Chamber thereof or on both Chambers sitting together or any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Provincial Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of a committee so to do :

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and

disclosure, as may be made by the Gover

(5) The provisions of subsections

relation to persons who by virtue of

otherwise take part in the proceedings o

members of the Legislature.

Salaries and allowances of members.

72. Members of Provincial Legislative Assemblies and Legislative Councils shall be entitled to receive such salaries and allowances as may from time to time be determind by Act of the Provincial Legislature, and until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Part of this Act applicable in the case of members of the Legislative Council of the Province.

Legislative Procedure.

Introduction of Bills, &c.

73. (1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber of the Legislature of a Province which

(3) A Bill pending in the Legislative Council of a Province which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(4) A Bill which is . Province, or which having been passe iding in the Legislative Council, shall

74. (1) Subject to the provisions of this section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers, either without amendments or with such amendments

Passing of Bills in Provinces having Legislative Councils.

Governor may summon the Chambers to meet in a joint sitting for the purpose

the Bill relates to finance nsibilities, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed.

The functions of the Governor under the proviso to this subsection shall be exercised by him in his discretion.

(3) If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers:

Provided that at a joint sitting—

(*a*) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill;

(*b*) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed,

and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

75. A Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Chambers of

Assent to Bills.

the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the consideration of the Governor-General:

Provided that the Governor may in his discretion return the Bill together with a message requesting that the Chamber or Chambers will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly.

76. (1) When a Bill is reserved by a Governor for the consideration of the Governor-General, the Governor-General shall in his discretion declare, either that he assents in His Majesty's name to the Bill, or that

Bills reserved for consideration.

he withholds assent therefrom, or that he reserves the Bill for the signification of *His Majesty's pleasure thereon :*

Provided that the Governor-General may, if he in his discretion thinks fit, direct the Governor to return the Bill to the Chamber, or, as the case may be, the Chambers, of the Provincial Legislature together with such a message as is mentioned in the proviso to the last preceding section and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly and, if it is again passed by them with or without amendment, it shall be presented again to the Governor-General for his consideration.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Provincial Legislature unless and until, within twelve months from the day on which it was presented to the Governor, the Governor makes known by public notification that His Majesty has assented thereto.

Power of Crown to disallow Acts.

77. Any Act assented to by the Governor or the Governor-General may be disallowed by His Majesty within twelve months *from the date of the assent,* and *where any Act* is so disallowed the Governor shall forthwith make the disallowance known by public notification and as from the date of the notification the Act shall become void.

Procedure in Financial matters.

Annual financial statement.

78. (1) The Governor shall in respect of every financial year cause to be laid before the Chamber or Chambers of the Legislature a statement of the estimated receipts and expenditure of the Province for that year, in this Part of this Act referred to as the "annual financial statement"

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(*a*) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Province ; and

(*b*) the sums required to meet other expenditure proposed to be made from the revenues of the Province,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of each Province—

(*a*) the salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council ;

(*b*) debt charges for which the Province is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ;

(*c*) the salaries and allowances of ministers, and of the advocate-general ;

(*d*) expenditure in respect of the salaries and allowances of judges of any High Court ;

(*e*) expenditure connected with the administration of any areas which are for the time being excluded areas ;

(*f*) any sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal ;

(*g*) any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Province shall be decided by the Governor in his discretion.

Procedure in Legislature with respect to estimates.

79. (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of a Province shall not be submitted to the vote of the Legislative Assembly, but nothing in this subsection shall be construed as preventing the discussion in the Legislature of those estimates, other than estimates relating to expenditure referred to in paragraph (*a*) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

Authentication of schedule of authorised expenditure.

80. (1) The Governor shall authenticate by his signature a schedule specifying—

(*a*) the grants made by the Assembly under the last preceding section;

(*b*) the several sums required to meet the expenditure charged on the revenues of the Province but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Chamber or Chambers:

Provided that, if the Assembly have refused to assent to any demand for a grant or have assented to such a demand subject to a reduction of the amount specified therein, the Governor may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the [illegible] appears to him necess-[illegible]

[illegible] ore the Assembly but shall not be open to discussion or vote in the Legislature.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Province shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

Supplementary statements of expenditure.

81. If in respect of any financial year further expenditure from the revenues of the Province becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before the Chamber or Chambers a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Special provisions as to financial Bills.

82. (1) A Bill or amendment making provision—

(*a*) for imposing or increasing any tax; or [illegible] guarantee by [illegible] al obligations [illegible]

Council.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of

fines or other pecuniary penalties, or for the demand and payment of fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a Chamber of the Legislature unless the Governor has recommended to that Chamber the consideration of the Bill.

Provisions with respect to certain educational grants.

83 (1) If in the last complete financial year before the commencement of this Part of this Act a grant for the benefit of the Anglo-Indian and European communities or either of them was included in the grants made in any Province for education, then in each subsequent financial year, not being a year in which the Provincial Legislative Assembly otherwise resolve by a majority which include at least three-fourths of the members of the Assembly, a grant shall be made for the benefit of the said community or communities not less in amount than the average of the grants made for its or their benefit in the ten financial years ending on the thirty-first day of March, nineteen hundred and thirty-three :

Provided that, if in any financial year the total grant for education in the Province is less than the average of the total grants for education in the Province in the said ten financial years, then, whatever fraction the former may be of the latter, any grant made under this sub-section in that financial year for the benefit of the said community or communities need not exceed that fraction of the average of the grants made for its or their benefit in the said ten financial years.

In computing for the purposes of this subsection the amount of any grants, grants for capital purposes shall be included.

(2) The provisions of this section shall cease to have effect in a Province if at any time the Provincial Legislative Assembly resolve by a majority which includes at least three-fourths of the members of the Assembly that those provisions shall cease to have effect.

(3) Nothing in this section affects the special responsibility of the Governor of a Province for the safeguarding of the legitimate interests of minorities.

Procedure generally.

Rules of procedure.

84 (1) A Chamber of a Provincial Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business.

Provided that, as regards either a Legislative Assembly or a Legislative Council, the Governor shall in his discretion, after consultation with the Speaker or the President, as the case may be, make rules—

(*a*) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise

business. ;

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satisfied that the matter affects the interests of the Provincial Government or of a British subject ordinarily resident in the Province, and has given his consent to

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any *rule* made by a Chamber, the rule made

(2) In a Province having a Legislative Council the Governor after

viso to the preceding subsection as the Governor in his discretion may think fit.

(3) *Until* rules are made under this section the rules of procedure and standing orders in force immediately before the commencement of this Part of this Act with respect to the Legislative Council of the Province shall have effect in relation to the Legislature of the Province, subject to such modifications and adaptations as may be made therein by the Governor acting in his discretion.

(4) At a joint sitting of two Chambers the President of the Legislative *Council*, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

English to be used in Provincial Legislatures.

85. All proceedings in the Legislature of a Province shall be conducted in the English language :

Provided that the rules of procedure of the Chamber or Chambers, and the rules, if any, with respect to joint sittings, shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

Restrictions on discussion in the Legislature.

86. (1) No discussion shall take place in a Provincial Legislature with respect to the conduct of any judge of the Federal Court or of a High Court in the discharge of his duties.

In this subsection the reference to a High Court shall be construed as including a reference to a Court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.

(2) If the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Provincial Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.

Courts not to inquire into proceedings of the Legislature

87. (1) The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating precedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of these powers

CHAPTER IV.

Legislative Powers of Governor.

Power of Governor to promulgate ordinances during recess of Legislature.

88.—(1) If at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require :

Provided that the Governor—

(*a*) shall exercise *his individual judgment as respects the promulgation* of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his or the Governor-General's previous sanction to the introduction thereof into the Legislature ; and

(*b*) shall not without instructions from the Governor-General, acting in his discretion, promulgate any such ordinance, if a Bill containing the same provisions would under this Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature, or if he would have deemed it *necessary to reserve a Bill containing the same provisions for the* consideration of the Governor-General.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(*a*) *shall be laid before the Provincial Legislature and shall* cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council ;

(*b*) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor ; and

(*c*) *may be withdrawn at any time by the Governor.*

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void

Power of Governor to promulgate ordinances at any time with respect to certain subjects.

89. (1) If at any time the Governor of a Province is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his *discretion, or to exercise his individual judgment,* he *may promulgate such* ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, *but every such ordinance*—

(*a*) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature ;

(*b*) may be withdrawn at any time by the Governor ; and

(*c*) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature, it shall be void :

Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, an ordinance promulgated under this section shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor General and assented to by him.

(5) The functions of the Governor under this section shall be exercised by him in his discretion but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion :

Provided that, if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.

Power of Governor in certain circumstances to enact Acts.

90. (1) If at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation esssential, and either—

(*a*) enact forthwith as a Governor's Act a Bill containing such provisions as he considers necessary ; or

(*b*) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor takes such action as is mentioned in paragraph (*b*) of the preceding subsection, he may, at any time after the expiration of one month, enact, as a Governor's Act, the Bill proposed by him to the Chamber or Chambers either in the form of the draft communicated to them, or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.

(5) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Provincial Legislature assented to by the Governor and, if and so far as it makes any provision which would not be valid if enacted in an Act of that Legislature, shall be void :

Provided that, for the purposes of the provisions of this Act relating to the [illegible] which is repugnant to an Act of the [illegible] be deemed to be an Act reserved [illegible] and assented to by him.

(4) Every Governor's Act shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor under this section shall be exercised by him in his discretion, but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

CHAPTER V.

Excluded Areas and Partially Excluded Areas.

Excluded areas and partially excluded areas.

91. (1) In this Act the expressions "excluded area" and "partially excluded area" mean respectively such areas as His Majesty may by Order in Council declare to be excluded areas or partially excluded areas.

The Secretary of State shall lay the draft of the Order which it is proposed to recommend His Majesty to make under this subsection before Parliament within six months from the passing of this Act.

(2) His Majesty may at any time by Order in Council—

(*a*) direct that the whole or any specified part of an excluded area shall become, or become part of, a partially excluded area ;

(*b*) direct that the whole or any specified part of a partially excluded area shall cease to be a partially excluded area or a part of such an area ;

(*c*) *alter, but only by way of rectification of boundaries, any excluded* or partially excluded area;

(*d*) on any alteration of the boundaries of a Province, or the creation of a new Province, declare any territory not previously included in any Province to be, or to form part of, an excluded area or a partially excluded area,

and any such Order may contain such incidential and consequential provisions as appear to His Majesty to be necessary and proper, but save as aforesaid the Order in Council made under subsection (1) of this section shall not be varied by any subsequent Order

Administration of excluded areas and partially excluded areas.

92. (1) *The executive authority of a Province extends to excluded and* partially excluded areas therein, but, notwith-

excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make Regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any Regulations so made may repeal or amend any Act of the Federal Legislature or of the Provincial Legislature, or any existing Indian law, which is for the time being applicable to the area in question.

Regulations made under this subsection shall be submitted forthwith to the Governor-General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such Regulations assented to by the Governor General as they apply in relation to Acts of a Provincial Legislature assented to by him.

(3) *The Governor shall, as respects any area in a Province which is for the* time being an excluded area exercise his functions in his discretion.

CHAPTER VI.

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY.

Power of Governor to issue *Proclamations.*

93. (1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

(*a*) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion;

(*b*) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this subsection shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation under this section—

(*a*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(*b*) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months :

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub section it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

(4) If the Governor, by a Proclamation under this section, assumes to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Provincial Acts, Provincial laws, or Acts or laws of a Provincial Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor-General in his discretion.

PART IV.

The Chief Commissioners' Provinces.

Chief Commissioners' Provinces.

94. (1) The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief Commissioners' Provinces of British Paluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area known as Panth Piploda, and such other Chief Commissioners' Provinces as may be created under this Act.

(2) Aden shall cease to be part of India.

(3) A Chief Commissioner's Province shall be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion.

British Baluchistan.

95. (1) In directing and controlling through the Chief Commissioner the administration of British Baluchistan, the Governor-General shall act in his discretion.

(2) The executive authority of the Fed [illegible] as it extends to other Chief Commissioner[illegible] thing in this Act, no Act of the Federal [illegible] chistan unless the Governor-General in [illegible] directs and the Governor-General in giving such a direction with respect to any Act may direct that the Act shall in its application to the Province, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(3) The Governor-General may in his discretion make Regulations for the peace and good government of British Baluchistan, and any Regulations so made may repeal or amend any Act of the Federal Legislature or any existing Indian law which is for the time being applicable to the Province and, when promulgated by the Governor General, shall have the same force and effect as an Act of the Federal Legislature which applies to the Province.

The provisions of Part II of this Act relating to the power of His Majesty to disallow Acts shall apply in relation to any such Regulations as they apply in relation to Acts of the Federal Legislature assented to by the Governor-General.

96. The provisions of subsection (3) of the last preceding section shall apply in relation to the Andaman and Nicobar Islands as they apply in relation to British Baluchistan.

The Andaman and Nicobar Islands.

97. Until other provision is made by His Majesty in Council, the constitution, powers and functions of the Coorg Legislative Council, and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg, shall continue unchanged.

Coorg.

98. The provisions of Part III of this Act with respect to police rules and with respect to crimes of violence intended to overthrow the government, including the provisions thereof relating to the non-disclosure of certain records and information, shall apply in relation to Chief Commissioners' Provinces as they apply in relation to Governors' Provinces, with the substitution for references to the Governor and the Chamber or Chambers of the Provincial Legislature of references to the Governor-General and the Chambers of the Federal Legislature.

Provisions as to police rules & c., and as to crimes of violence intended to overthrow the Government.

PART V.

Legislative Powers.

CHAPTER I.

Distribution of Powers.

99. (1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof

Extent of Federal and Provincial laws.

(2) *Without prejudice to the generality of the powers conferred by the* preceding subsection, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies—

(*a*) to British subjects and servants of the Crown in any part of India ; or

(*b*) to British subjects who are domiciled in any part of India wherever they may be ; or

(*c*) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be ; or

(*d*) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be ; or

(*e*) in the case of a law for the regulation or discipline of any naval, military, or *air force raised in* British India, *to members of,* and persons attached to, employed with or following, that force, wherever they may be.

100. (1) Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List 1 *in the Seventh Schedule to this Act (hereinafter called the "Federal Legislative List").*

Subject matter of Federal and Provincial laws.

(2) Notwithstanding anything in the next succeeding subsection, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurr Legislative List").

(3) Subject to the two preceding subsections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

Extent of power to legislate for States.

101. Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.

Power of Federal Legislature to legislate if an emergency is proclaimed.

102. (1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List:

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

(3) A Proclamation of Emergency—

(*a*) may be revoked by a subsequent Proclamation;

(*b*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and

(*c*) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

Power of Federal Legislature to legislate for two or more Provinces by consent.

103. If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province.

104. (1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

Residual powers of legislation.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

105. Without prejudice to the provisions of this Act with respect to the legislative powers of the Federal Legislature, provision may be made by Act of that Legislature for applying the Naval Discipline Act to the Indian naval forces and, so long as provision for that purpose is made either by an Act of the Federal Legislature or by an existing Indian law, the Naval Discipline Act as so applied shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, subject however—

Application of Naval Discipline Act to Indian naval forces

(*a*) in the application of the said Act to the forces and ships of the Indian navy and to the trial by Court martial of officers and men belonging thereto, to such modifications and adaptations, if any, as may be, or may have been, made by the Act of the Federal or Indian Legislature to adapt the said Act to the circumstances of India, including such adaptations as may be, or may have been, so made for the purpose of authorising or requiring anything which under the said Act is to be done by or to the Admiralty, or the Secretary of the Admiralty, to be done by or to the Governor-General, or some person authorised to act on his behalf, and

(*b*) in the application of the said Act to the forces and ships of His Majesty's navy other than those of the Indian navy, to such modifications and adaptations as may be made, or may have been made under section sixty six of the Government of India Act, by His Majesty in Council, for the purpose of regulating the relations of those forces and ships to the forces and the ships of the Indian Navy.

(2) *Notwithstanding anything in this Act or in any Act of any Legislature* in India, where any forces and ships of the Indian navy have been placed at the disposal of the Admiralty, the Naval Discipline Act shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, without any such modifications or adaptations as aforesaid.

106. (1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the *implementing of treaties and agreements with* other countries have power to make any law for *any Province except with the previous consent* of the Governor, or for a Federated State except with the previous consent of the Ruler thereof.

Provisions as to legislation for giving effect to international agreement

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State.

(3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or, as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry

Inconsistency between Federal laws and Provincial, or State, laws.

107. (1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, ... he Provincial law, or, as the case may be, the ... d the Provincial law shall, to the extent of ...

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter :

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail, and the law of the State shall, to the extent of the repugnancy, be void.

CHAPTER II.

Restrictions on Legislative Powers.

Sanction of Governor-General or Governor required for certain legislative proposals.

108. (1) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ; or

(b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor ; or

(c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion ; or

(d) repeals, amends or affects any Act relating to any police force ; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned ; or

(f) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled ... wholly contro- ... ome in respect ...

(2) Unless the Governor-G ... give his previous sanction, there shall ... Chamber of a Provincial Legislature any ...

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ; or

(*b*) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General; or

(*c*) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion; or

(*d*) affects the procedure for criminal proceedings in which European British subjects are concerned;

and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

(i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or

(ii) repeals, amends or affects any Act relating to any police force

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment.

Requirements as to sanctions and recommendations to be regarded as matters of procedure only.

109. (1) Where under any provision of this Act the previous sanction or recommendation of the Governor-General or of a Governor is required to the introduction or passing of a Bill or the moving of an amendment, the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Act with respect to the withholding of assent to, or the reservation of, Bills.

(2) No Act of the Federal Legislature or a Provincial Legislature, and no provision in any such Act, shall be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given—

(*a*) where the previous sanction or recommendation required was that of the Governor, either by the Governor, by the Governor-General, or by His Majesty;

(*b*) where the previous sanction or recommendation required was that of the Governor-General, either by the Governor-General or by His Majesty.

Savings.

110. Nothing in this Act shall be taken—

(*a*) to affect the power of Parliament to legislate for British India, or any part thereof; or

(*b*) to empower the Federal Legislature, or any Provincial Legislature—

(i) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize Courts, or

(ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment; or

(iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court.

CHAPTER III.

PROVISIONS WITH RESPECT TO DISCRIMINATION, &c.

British subjects domiciled in the United Kingdom.

111. (1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Federal or Provincial law as—

(*a*) imposes any restriction on the right of entry into British India; or

(b) imposes by reference to place of birth, race, descent, language, religion, domicile, residence, or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business or profession :

Provided that no person shall by virtue of this subsection be entitled to exemption from any such restriction, condition, liability or disability as aforesaid if and so long as British subjects domiciled in British India are by or under the law of the United Kingdom subject in the United Kingdom to a like restriction, condition, liability, or disability imposed in regard to the same subjectmatter by reference to the same principle of distinction,

(2) For the purposes of the preceding subsection, a provision, whether of the law of British India or of the law of the United Kingdom, empowering any public authority to impose quarantine regulations, or to exclude or deport individuals, wherever domiciled, who appear to that authority to be undesirable persons, shall not be deemed to be a restriction on the right of entry.

(3) Notwithstanding anything in this section, if the Governor-General or, as the case may be, the Governor of any Province, by public notification certifies that for the prevention of any grave menace to the peace or tranquillity of any part of India or, as the case may be, of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of subsection (1) of this section should be wholly or partially suspended in relation to any law, then while the notification is in force the operation of those provisions shall be suspended accordingly.

The functions of the Governor-General and of a Governor under this subsection shall be exercised by him in his discretion.

Taxation.

112. (1) No Federal or Provincial law which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or Burma or companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom or Burma, and any law passed or made in contravention of this section shall, to the extent of the contravention, be invalid.

(2) Without prejudice to the generality of the foregoing provisions, a law shall be deemed to be such as to discriminate against such persons or companies as aforesaid if it would result in any of them being liable to greater taxation than that to which they would be liable if domiciled in British India or incorporated by or under the laws of British India, as the case may be.

(3) For the purposes of this section a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered thereunder in Burma shall be deemed to be a company incorporated by or under the laws of Burma.

Companies incorporated in the United Kingdom.

113. (1) Subject to the following provisions of this Chapter, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock or bonds and its officers, agents, and servants, shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies carrying on or proposing to carry on business in British India requirements or conditions relating to or connected with—

(a) the place of incorporation of a company or the situation of its registered [illegible]

dence [illegible]

or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants :

Provided that no company or person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated by or under the laws of British India and carrying on or proposing to carry on business in the United Kingdom.

(2) If and in so far as any total or partial exemption from, or preferential treatment in respect of, taxation imposed on companies by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters mentioned in subsection (1) of this section, any company incorporated by or under the laws of the United Kingdom carrying on business in British India shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under the laws of British India and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned.

Companies incorporated in India.

114. (1) Subject to the following provisions of this chapter, a British subject domiciled in the United Kingdom shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies incorporated or proposed to be incorporated, whether before or after the passing of this Act, by or under the laws of British India, any requirements or conditions relating to, or connected with, the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants :

Provided that no person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated or proposed to be incorporated by or under the laws of the United Kingdom on British subjects domiciled in British India.

(2) If and in so far as, in the case of any such companies as aforesaid, any total or partial exemption from, or preferential treatment in respect of, taxation imposed by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters aforesaid, then, so far as regards such members of its governing body and such of the holders of its shares, stock, debentures, debenture stock or bonds, and such of its officers, agents and servants, as are British subjects domiciled in the United Kingdom, any such company shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under those laws does not, as regards such of the members of a company's governing body, or such of the holders of its shares, stock, debentures, debenture stock or bonds, or such of its officers, agents, or servants, as are British subjects domiciled in British India, depend on compliance with conditions as to any of the matters aforesaid.

(3) For the purposes of this section, but not for the purposes of any other provision of this chapter, a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered thereunder in Burma, shall be deemed to be a company incorporated by or under the laws of British India.

Ships and aircraft.

115. (1) No ship registered in the United Kingdom shall be subjected by or under any

Federal or Provincial law to any treatment affecting either the ship herself, or her master, officers, crew, passengers or cargo, which is discriminatory in favour of ships registered in British India, except in so far as ships registered in British India are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom.

(2) This section shall apply in relation to aircraft as it applies in relation to ships.

(3) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this chapter.

Subsidies for the encouragement of the industry.

116. (1) Notwithstanding anything in any Act of the Federal Legislature or of a Provincial Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in India shall be eligible for any grant, bounty or subsidy payable out of the revenues of the Federation or of a Province for the encouragement of any trade or industry to the same extent as companies incorporated by or under the laws of British India are eligible therefor:

Provided that this subsection shall not apply in relation to any grant, bounty or subsidy for the encouragement of any trade or industry, if and so long as under the law of the United Kingdom for the time being in force companies incorporated by or under the laws of British India and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the United Kingdom for the encouragement of the same trade or industry.

(2) Notwithstanding anything in this chapter, an Act of the Federal Legislature or of a Provincial Legislature may require, in the case of a company which at the date of the passing of that Act was not engaged in British India in that branch of trade or industry which it is the purpose of the grant, bounty or subsidy to encourage, that the company shall not be eligible for any grant, bounty or subsidy under the Act unless and until—

(*a*) the company is incorporated by or under the laws of British India or, if the Act so provides, is incorporated by or under the laws of British India or of a Federated State; and

(*b*) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe, are British subjects domiciled in India or, if the Act so provides, are either British subjects domiciled in India or subjects

facilities as may be so prescribed
d in India or, if the Act so provi-
subjects of a Federated State.

(3) For the purposes of this section a company incorporated by or under the laws of the United Kingdom shall be deemed to be carrying on business in India if it owns ships which habitually trade to and from ports in India.

Supplemental.

117. The foregoing provisions of this chapter shall apply in relation to any ordinance, order, byelaw, rule or regulation passed or made after the passing of this Act and having by virtue of any existing Indian law, or of any law of the Federal or any Provincial Legislature, the force of law as they apply in relation to Federal and Provincial laws, but, save as aforesaid, nothing in those provisions shall affect the operation of any existing Indian law.

Power to secure reciprocal treatment by convention.

118. (1) If after the establishment of the Federation a convention is made between His Majesty's Government in the United Kingdom and the Federal Government whereby similarity of treatment is assured in

the United Kingdom to British subjects domiciled in British India and to companies incorporated by or under the laws of British India and in British India to British subjects domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this chapter, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in India for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and while any such Order is in force, the operation of those sections shall to that extent be suspended.

(2) An Order in Council under this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

Professional and technical qualifications in general.

119. (1) No Bill or amendment which prescribes, or empowers any authority to prescribe, the professional or technical *qualifications which are to be requisite for any* purpose in British India or which imposes, or empowers any authority to impose, by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in British India, shall be introduced or *moved in either Chamber of the Federal Legislature without the previous sanc*tion of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(2) The Governor-General or a Governor shall not give his sanction for the
purposes of the preceding
legislation is so framed
the coming into operation
be imposed by or under th
carrying on any occupation, trade, or business or holding any office in British
India shall, except in so far as may be necessary in the interests of the public, be debarred from continuing to practise that profession, carry on that occupation, trade or business, or hold that office, or from doing anything in the course
the discharge of the
disability, liability,

(3) All *regulations* made under the provisions of any Federal or Provincial law which prescribe the professional or technical qualifications which are to be requisite for any purpose in British India, or impose, by reference to any professional or technical qualification, any *disability, liability, restriction* or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in British India, shall, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor General, or, as the case may be, the Governor, and, if within two months *from the date of the publication complaint is made to*

into operation, by public notification disallow the regulations or any of them.

In this sub-section the expression "regulations" includes rules, bye
orders and ordinances.

In the discharge of his functions under this subsection the Go
General or a Governor shall exercise his individual judgment.

(4) If the Governor General exercising .. notification directs that the provisions of the apply in relation to any existing Indian law, th tion to that law accordingly, and the functions to be performed in relation to a Federal law by the Governor-General and in relation to a Provincial law by the Governor shall, in relation to that existing Indian law, be performed, according as may be directed by the notification, by the Governor-General exercising his individual judgment, by the Governor exercising his individual judgment or partly by the one and partly by the other of them.

120. (1) So long as the condition set out in subsection (3) of this section continues to be fulfilled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not by or under any existing Indian law, or any law of the Federal or any Provincial Legislature, be excluded from practising medicine, surgery or midwifery in British India, or in any part thereof, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery and he shall not be so excluded on that ground unless a law of the Federation or of the Province, as the case may be, makes provision for securing—

Medical qualifications.

(a) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor-General and to the University or other body granting that diploma; and

(b) that such a proposal shall not become operative or, as the case may be, shall cease to operate, if the Privy Council on an application made to them under the next succeeding subsection determine that the diploma in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.

(2) If any University or other body in the United Kingdom which grants a medical diploma, or any British subject who holds such a diploma, is aggrieved by the proposal to exclude holders of that diploma from practice or registration in British India, that body or person may make an application to the Privy Council, and the Privy Council, after giving to such authorities and persons both in British India and in the United Kingdom as they think fit an opportunity of tendering evidence or submitting representations in writing, shall determine whether the dip ... fficient guarantee of the possessior ... of medicine, surgery and ... Governor-General, who shall communicate it to such authorities, and cause it to be published in such manner, as he thinks fit.

(3) The condition referred to in subsection (1) of this section is that British subjects domiciled in India who hold a medical diploma granted after examination in British India shall not be excluded from practising medicine, surgery or midwifery in the United Kingdo ... as qualified medical practitioners, except ... not furnish sufficient guarantee of the posses ... skill for the practice of medicine, surge... as the law of the United Kingdom makes ... as to the sufficiency of that diploma to be ... vy Council.

(4) A medical practitioner entitled to practise or to be registered in British India by virtue of a diploma granted in the United Kingdom, or in the United Kingdom by virtue of a diploma granted in British India shall not in the

practice of his profession be subjected to any liability, disability, restriction or condition to which persons entitled to practise by virtue of diplomas granted in the other country are not subject.

(5) The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply in relation to British subjects domiciled in Burma who, by virtue of medical diplomas granted to them in Burma or the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners as they apply in relation to British subjects domiciled in the United Kingdom who, by virtue of medical diplomas granted

(*b*) any reference in sub-section (2) or sub-section (4) to the United Kingdom shall be construed as a reference to Burma.

(6) Nothing in this section shall be construed as affecting any power of any recognised authority in the United Kingdom or British India to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.

(7) *In this section the expression "diploma" includes any certificate*, degree, fellowship, or other document or status granted to persons passing examinations.

Officers of Indian Medical Service, &c.

121. A person who holds a commission from His Majesty as a medical officer in the Indian Medical Service or any other branch of His Majesty's forces and is on the active list shall by virtue of that commission be deemed to be qualified to practise medicine, surgery and midwifery in British India, and be entitled to be registered in British India or any part thereof as so qualified.

PART VI.

ADMINISTRATIVE RELATIONS BETWEEN FEDERATION, PROVINCES AND STATES.

General

Obligation of units and Federation.

122. (1) The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State

(2) The reference in sub-section (1) of this section to laws of the Federal Legislature shall, in relation to any Province, include a reference to any existing Indian law applying in that Province.

(3) Without prejudice to any of the other provisions of this Part of this Act, in the exercise of the executive authority of the Federation in any Province or Federated State regard shall be had to the interests of that Province or State.

Governor-General may require Governors to discharge certain functions as his agents.

123 (1) The Governor General may direct the Governor of any province to discharge as his agent, either generally or in any particular case, such functions in and in relation to the tribal areas as may be specified in the direction.

(2) If in any particular case it appears to the Governor General necessary or convenient so to do, he may direct the Governor of any Province to discharge as his agent such functions in relation to defence, external affairs, or ecclesiastical affairs as may be specified in the direction.

(3) In the discharge of any such functions the Governor shall act in his discretion.

Power of Federation to cofer powers &c. on Provinces and States in certain cases.

124. (1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the excutive authority of the Federation extends.

(2) An Act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof.

(3) An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.

(4) Where by virtue of this section powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.

Administration of Federal Acts in Indian States.

125. (1) Notwithstanding anything in this Act, agreements may, and, if provision has been made in that behalf by the instrument of Accession of the State, shall, be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein.

(2) An agreement made under this section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Government and, if he is not so satisfied, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit.

(3) All courts shall take judicial notice of any agreement made under this section.

Control of Federation over Province in certain cases

126. (1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of [illegible]

-nor General in his discretion.

(3) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance:

Provided that nothing in this subsection shall be taken as restricting the power of the Federation to construct and maintain means of commuuication as part of its function with respect to naval, military and air force works.

n any Province effect has not
ction, the Governor-General,
he Governor of that province either the directions previously given or those directions modified in such manner as the Governor-General thinks proper.

(5) Without prejudice to his powers under the last preceding subsection, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or of any part thereof.

Acquisition of land for Federal purposes.

127. The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

Duty of Ruler of a State as respects Federal subjects.

128. (1) The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by
therein
Ruler of any Federated
under the preceding subsection, the Governor General, acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit:

Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act.

Broadcasting

Broadcasting

129. (1) The Federal Government shall not unreasonably refuse to entrust to the Government of any Province or the Ruler of any Federated State such functions with respect to broadcasting as may be necessary to enable that Government or Ruler—

(*a*) to construct and use transmitters in the Province or State,

(*b*) to regulate, and impose fees in respect of, the construction and use of transmitters and the use of receiving apparatus in the Province or State:

Provided that nothing in this subsection shall be construed as requiring the Federal Government to entrust to any such Government or Ruler any control over the use of transmitters constructed or maintained by the Federal Government or by persons authorised by the Federal Government, or over the use of receiving apparatus by persons so authorised.

(2) Any functions so entrusted to a Government or Ruler shall be exercised subject to such conditions as may be imposed by the Federal Government, including, notwithstanding anything in this Act, any conditions with respect to finance, but it shall not be lawful for the Federal Government so to impose any conditions regulating the matter broadcast by, or by authority of, the Government or Ruler.

(3) Any Federal laws which may be passed with respect to broadcasting shall be such as to secure that effect can be given to the foregoing provisions of this section.

Power of Federation to cofer powers &c. on Provinces and States in certain cases

124. (1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the excutive authority of the Federation extends.

(2) An Act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof.

(3) An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.

(4) Where by virtue of this section powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.

Administration of Federal Acts in Indian States.

125. (1) Notwithstanding anything in this Act, agreements may, and, if provision has been made in that behalf by the instrument of Accession of the State, shall, be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein.

(2) An agreement made under this section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Government and, if he is not so satisfied, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit.

(3) All courts shall take judicial notice of any agreement made under this section.

Control of Federation over Province in certain cases.

126. (1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions:

Provided that a Bill [illegible]
any such directions as a[illegible]
Chamber of the Federal [illegible]
-nor General in his discretion. [illegible] to the

(3) The executive authority of the F[illegible]
giving of directions to a Province as to [illegible]
means of communication declared in the dire[illegible]

Provided that nothing in this subsection shall be taken as restricting [illegible] power of the Federation to construct and maintain means of communication as part of its function with respect to naval, military and air force works.

(4) If it appears to the Governor-General that in any Province effect has not been given to any directions given under this section, the Governor-General, acting in his discretion, may issue as orders to the Governor of that province either the directions previously given or those directions modified in such manner as the Governor-General thinks proper.

(5) Without prejudice to his powers under the last preceding subsection, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or of any part thereof.

Acquisition of land for Federal purposes.

127. The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

Duty of Ruler of a State as respects Federal subjects.

128. (1) The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein.

(2) If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfil his obligations under the preceding subsection, the Governor General, acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit:

Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act.

Broadcasting.

Broadcasting.

129. (1) The Federal Government shall not unreasonably refuse to entrust to the Government of any Province or the Ruler of any Federated State such functions with respect to broadcasting as may be necessary to enable that Government or Ruler—

(*a*) to construct and use transmitters in the Province or State,

(*b*) to regulate, and impose fees in respect of, the construction and use of transmitters and the use of receiving apparatus in the Province or State:

Provided that nothing in this subsection shall be construed as requiring the Federal Government to entrust to any such Government or Ruler any control over the use of transmitters constructed or maintained by the Federal Government or by persons authorised by the Federal Government, or over the use of receiving apparatus by persons so authorised.

[illegible] be exercised [illegible] Government, [illegible] respect to [illegible] impose any conditions regulating the matter broadcast by, or by authority of, the Government or Ruler.

(3) Any Federal laws which may be passed with respect to broadcasting shall be such as to secure that effect can be given to the foregoing provisions of this section.

(4) If any question arises under this section whether any conditions imposed on any such Government or Ruler are lawfully imposed, or whether any refusal by the Federal Government to entrust functions is unreasonable, the question shall be determined by the Governor-General in his discretion.

(5) Nothing in this section shall be construed as restricting the powers conferred on the Governor-General by this Act for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, or as prohibiting the imposition on Governments or Rulers of such conditions regulating matter broadcast as appear to be necessary to enable the Governor General to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment.

Interference with Water Supplies.

Complaints as to interference with water supplies.

130. If it appears to the Government of any Governor's Province or to the Ruler of any Federated State that the interests of that Province or State, or of any of the inhabitants thereof, in the water from any natural source of supply in any Governor's or Chief Commissioner's Province or Federated State, have been, or are likely to be, affected prejudicially by—

(*a*) any executive action or legislation taken or passed, or proposed to be taken or passed, or

(*b*) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, the Government or Ruler may complain to the Governor-General.

Decision of complaints.

131. (1) If the Governor General receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on, the matters to which the complaint relates, or such of those matters as he may refer to them.

(2) A Commission so appointed shall investigate the matters referred to them and present to the Governor-General a report setting out the facts as [illegible] think proper.

[illegible] ration of the Commis- [illegible] planation, or that he [illegible] him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.

[illegible] appointed under this section [illegible] Federal Court, if requested [illegible] rs and issue such letters of request for the purposes of the proceedings of the Commission as they may make or issue in the exercise of the jurisdiction of the court.

(5) After considering any report made to him by the Commission, the Governor-General shall give such decision and make such order, if any, in the matter of the complaint as he may deem proper:

Provid [illegible] iven any decision, the Gover [illegible] fected request him so to do, [illegible] and His Majesty in Council [illegible] ny, in the matter as he deems proper.

(6) Effect shall be given in any Province or State affected to any order made under this section by His Majesty in Council or the Governor-General,

and any Act of a Provincial Legislature or of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(7) Subject as hereinafter provided the Governor-General, on application made to him by the Government of any Province, or the Ruler of any State affected, may at any time, if after a reference to, and report from, a Commission appointed as aforesaid he considers it proper so to do, vary any decision or order given or made under this section :

Provided that, where the application relates to a decision or order of His Majesty in Council and in any other case if the Government of any Province or the Ruler of any State affected request him so to do, the Governor-General shall refer the matter to His Majesty in Council, and His Majesty in Council may, if he considers proper so to do, vary the decision or order.

(8) An order made by His Majesty in Council or the Governor General under this section may contain directions as to the Government or persons by whom the expenses of the Commission and any costs incurred by any Province, State or persons in appearing before the Commission are to be paid, and may fix the amount of any expenses or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Federal Court.

(9) *The functions of the Governor General under this section shall be exercised by him in his discretion.*

Interference with water supplies of Chief Commissioner's Province.

132. If it appears to the Governor-General that the interests of any Chief Commissioner's Province, or of any of the inhabitants of such a Province, in the water from any *natural source of supply in any Governor's* Province or Federated State have been or are likely to be affected prejudicially by—

(*a*) any executive action or legislation taken or passed, or proposed to be taken or passed, or

(*b*) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, he may, if he in his discretion thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding section and thereupon those provisions shall apply as if the Chief Commissioner's Province were a Governor's Province and as if a complaint with respect to the matter had been made by the Government of that Province to the Governor-General.

Jurisdiction of Courts excluded.

133. Notwithstanding anything in this Act, neither the Federal Court nor any other court shall have jurisdiction to entertain any action or suit in respect of any matter if action in respect of that matter might have been taken under any of the three last preceding sections by the Government of a Province, the Ruler of a State, or the Governor General.

Ruler of State may exclude application of provisions as to water supply.

134. The provisions contained in this Part of this Act with respect to interference with water supplies shall not apply in relation to any Federated State the Ruler whereof has declared in his Instrument of Accession *that those provisions are not to apply in* relation to his State.

Inter-Provincial Co operation.

Provisions with respect to an Inter-Provincial Council

135. If at any time it appears to His Majesty upon consideration of *representations* addressed to him by the Governor-General that the public interests would *be* served by the establishment of an *Inter-Provincial* Council charged with the duty of—

(*a*) inquiring into and advising upon disputes which may [illegible] between Provinces ;

(*b*) investigating and discussing subjects in which some or all of the Provinces, or the Federation and one or more of the Provinces, have a common interest; or

(*c*) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for His Majesty in Council to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

An Order establishing any such Council may make provision for representatives of Indian States to participate in the work of the Council.

PART VII.

FINANCE, PROPERTY, CONTRACTS AND SUITS.

CHAPTER I.

FINANCE.

Distribution of Revenues between the Federation and the Federal Units.

Meaning of "revenues of Federation" and "revenues of Province."

136. Subject to the following provisions of this chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to provinces and Federated States, and subject to the provisions of this Act with respect to the Federal Railway Authority, the expression "revenues of the Federations" includes all revenues and public moneys raised or received by the Federation and the expression "revenues of the Province" includes all revenues and public moneys raised or received by a Province.

Certain succession duties, Stamp duties, terminal taxes and taxes on fares and freights.

137. Duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway, or air, and taxes on railway fares and freights, shall be levied and collected by the Federation, but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that duty or tax is leviable in that year, and shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by Act of the Federal Legislature:

Provided that the Federal Legislature may at any time increase any of the said duties or taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

Taxes on income.

138. (1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed:

Provided that—

(*a*) the percentage originally prescribed under this sub section shall not be increased by any subsequent Order in Council;

(b) the Federal Legislature may at any time increase the said taxes by a . for Federal purposes and the whole proceeds of any such surcharge ll form part of the revenues of the Federation.

(2) Notwithstanding anything in the preceding subsection, the Federation retain out of the moneys assigned by that subsection to Provinces and

(a) in each year of a prescribed period such sum as may be pres-bed; and

(b) in each year of a further prescribed period a sum less than that d in the preceding year by an amount, being the same amount in each so calculated that the sum to be retained in the last year of the period be equal to the amount of each such annual reduction:

Provided that—

(i) neither of the periods originally prescribed shall be reduced by any quent Order in Council;

(ii) the Governor-General in his discretion may in any year of the second period direct that the sum to be retained by the Federation in that shall be the sum retained in the preceding year, and that the second pres-d period shall be correspondingly extended, but he shall not give any direction except after consultation with such representatives of Federal, and State interests as he may think desirable, nor shall he give any direction unless he is satisfied that the maintenance of the financial ty of the Federal Government requires him so to do.

(3) Where an Act of the Federal Legislature imposes a surcharge for purposes under this section, the Act shall provide for the payment by Federated State in which taxes on income are not leviable by the Federa- of a contribution to the revenues of the Federation assessed on such basis may be prescribed with a view to securing that the contribution shall be the quivalent, as near as may be, of the net proceeds which it is estimated would lt from the surcharge if it were leviable in that State, and the State shall ecome liable to pay that contribution accordingly.

(4) In this section—

"taxes on income" does not include a corporation tax;

"prescribed" means prescribed by His Majesty in Council; and

"Federal emoluments" includes all emoluments and pensions payable out the revenues of the Federation or of the Federal Railway Authority in respect which income-tax is chargeable.

Corporation tax.

139. (1) Corporation tax shall not be levied by the Federation in any Federated State until ten years have elapsed from the establishment of the Federation.

(2) Any Federal law providing for the levying of corporation tax shall con-tain provisions enabling the Ruler of any Federated State in which the tax would otherwise be leviable to elect that the tax shall not be levied in the State, but that in lieu thereof there shall be paid by the State to the revenues of the Federation a contribution as near as may be equivalent to the net proceeds which it is estimated would result from the tax if it were levied in the State.

(3) Where the Ruler of a State so elects as aforesaid, the officers of the Fede-ration shall not call for any information or returns from any corporation in the State, but it shall be the duty of the Ruler thereof to cause to be supplied to the Auditor-General of India such information as the Auditor-General may reason-ably require to enable the amount of any such contribution to be determined.

If the Ruler of a State is dissatisfied with the determination as to the amount of the contribution payable by his State in any financial year, he may appeal to the Federal Court, and if he establishes to the satisfaction of that Court th the amount determined is excessive, the Court shall reduce the amount ac ingly and no appeal shall lie from the decision of the Court on the appeal.

Provincial Government, municipality or other local authority or body for the purposes of the Province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty-five,

144. (1) In the foregoing provisions of this chapter "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificates shall be final.

Calculation of "net proceeds", &c.

(2) Subject as aforesaid, and to any other express provision of this chapter, an Act of the Federal Legislature may, in any case where under this part of this Act the proceeds of any duty or tax are, or may be, assigned to any Province or State, or a contribution is, or may be, made to the revenues of the Federation by any State, provide for the manner in which the proceeds of any duty or tax and the amount of any contribution are to be calculated, for the times in each year and the manner at and in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

The Crown and the States.

Expenses of the Crown in connection with Indian States.

145. There shall be paid to His Majesty by the Federation in each year the sums stated by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States to be required, whether on revenue account or otherwise, for the discharge of those functions, including the making of any payments in respect of any customary allowances to members of the family or servants of any former Ruler of any territories in India.

Payments from or by Indian States.

146. All cash contributions and payments in respect of loans and other payments due from or by any Indian State which, if this Act had not been passed, would have formed part of the revenues of India, shall be received by His Majesty, and shall, if His Majesty has so directed, be placed at the disposal of the Federation, but nothing in this Act shall derogate from the right of His Majesty, if he thinks fit so to do, to remit at any time the whole or any part of any such contributions or payments.

Remission of States contributions.

147. (1) Subject to the provisions of subsection (3) of this section, His Majesty may, in signifying his acceptance of the Instrument of Accession of a State, agree to remit over a period not exceeding twenty years from the date of the accession of the State to the Federation any cash contributions payable by that State.

(2) Subject as aforesaid, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of this Act—

(a) in return for specific military guarantees, or

(b) in return for the discharge of the State from obligations to provide military assistance,

there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, be paid to that State, but in the first-mentioned case on condition that the said guarantees are waived, such sums as in the opinion of His Majesty ought to be paid in respect of any such cession aforesaid.

(3) Notwithstanding anything in this section—

(*a*) every such agreement or direction as aforesaid shall be such as to secure that no such remission or payment shall be made by virtue of the agreement or direction until the Provinces have begun to receive moneys under the section of this chapter relating to taxes on income, and, in the case of a remission, that the remission shall be complete before the expiration of twenty years from the date of the accession to the Federation of the State in question, or before the end of the second prescribed period referred to in subsection (2) of the said section, whichever first occurs ; and

(*b*) no contribution shall be remitted by virtue of any such agreement save in so far as it exceeds the value of any privilege or immunity enjoyed by the State ; and

(*c*) in fixing the amount of any payments in respect of ceded territories, account shall be taken of the value of any such privilege or immunity.

(4) This section shall apply in the case of any cash contributions the liability for which has before the [illegible] capital sum or sums, an[illegible] sum or sums so paid shall [illegible] repayments shall be deemed to be remissions for the purposes of this section.

(5) In this chapter "cash contributions" means—

(*a*) periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions pa[illegible] for the aid and protection of a [illegible] commutation of any obligation of [illegible] Majesty, or in respect of the maint[illegible] service in connection with a State, or in respect of the maintenance of local military forces or police, or in respect of the expenses of an agent ;

(*b*) periodical co[illegible] or on a re-grant or i[illegible] of land on perpetual [illegible] tory ;

(*c*) periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse.

(6) In this chapter "privilege or immunity" means any such right, privilege, advantage or immunity of a financial character as is hereinafter mentioned, that is to say—

(*a*) rights, privileges or advantages in respect of, or connected with, the levying of sea customs or the production and sale of untaxed salt ;

(*b*) sums receivable in repect of the abandonment or surrender of the right to levy internal customs duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt ;

(*c*) the annual value to the Ruler of any privilege or territ ory granted in respect of the abandonment or surrender of any such right as is mentioned in [illegible]

[illegible] free service stamps or the free carriage of [illegible]s ;

(*e*) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question ; and

(*f*) the right to issue currency notes [illegible] not being a right, privilege, [illegible] sion of the State, or one [illegible] reason ought not to be taken [illegible] d to be suitable for [illegible] as appear to His [illegible] e provisions of

this and the next but one succeeding sections, and in particular provision for determining from time to time the value to be attributed for the purposes of those provisions to any privilege or immunity the value of which is fluctuating or uncertain.

Certain payments to Federated States, &c., to be charged on Federal revenues

148. Any payments made under the last preceding section and any payments heretofore made to any State by the Governor-General in Council or by any Local Government under any agreements made with that State before the passing of this Act, shall be charged on the revenues of the Federation or on the revenues of the corresponding Province under this Act, as the case may be.

Value of privileges and immunities to be set off against share of taxes, &c., assigned to Federated States.

149. Where under the foregoing provisions of this chapter there is made in any year by the Federation to a Federated State any payment or distribution of, or calculated by reference to, the net proceeds of any duty or tax, the value in and for that year of any privilege or immunity enjoyed by that State in respect of any former or existing source of revenue from a similar duty or tax or from goods of the same kind, being a privilege or immunity which has not been otherwise taken into account, shall, if and in so far as the Act of the Federal Legislature under which the payment or distribution is made so provides, be set off against the payment or distribution.

Miscellaneous Financial Provisions.

Expenditure defrayable out of Indian revenues.

150. (1) No burden shall be imposed on the revenues of the Federation or the Provinces except for the purposes of India or some part of India.

(2) Subject as aforesaid, the Federation or a Province may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federal or the Provincial Legislature, as the case may be, may make laws.

Provisions as to the custody of public moneys.

151. (1) Rules may be made by the Governor General and by the Governor of a Province for the purpose of securing that all moneys received on account of the revenues of the Federation or of the Province, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, the Federation or of the Province, and the uthorise some person to prescribe, the proce- ... the payment of moneys into the said account, the withdrawal of moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid.

(2) In the exercise of his powers under this section the Governor-General or a Governor shall exercise his individual judgment

Exercise by Governor-General of certain powers with respect to Reserve Bank.

152. (1) The functions of the Governor-General with respect to the following matters shall be exercised by him in his discretion, that is to say—

(*a*) the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India, the approval of their salaries and allowances, and the fixing of their terms of office ;

(*b*) the appointment of an officiating Governor or Deputy Governor of the Bank ;

(*c*) the supersession of the Central Board of the Bank and any action consequent thereon ; and

(*d*) the liquidation of the Bank.

(2) In nominating directors of the Reserve Bank of India and in removing from office any director nominated by him, the Governor-General shall exercise his individual judgment.

153. No Bill or amendment which affects the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India shall be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

Previous sanction of Governor-General to legislation with respect to Reserve Bank, currency and coinage.

154. Property vested in His Mejesty for purposes of the government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Federated State :

Exemption of certain public property from taxation.

Provided that, until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such tax, shall so long as that tax continues, continue to be liable, or to be treated as liable, thereto.

155. (1) Subject as hereinafter provided, the Government of a Province and the Ruler of a Federated State shall not be liable to Federal taxation in respect of lands or buildings situate in British India or income accruing, arising or received in British India :

Exemption of provincial Governments and Rulers of Federated States in respect of Federal taxation.

Provided that—

(*a*) where a trade or business of any kind is carried on by or on behalf of the Government of a Province in any part of British India outside that Province or by a Ruler in any part of British India, nothing in this subsection shall exempt that Government or Ruler from any Federal taxation in respect of that trade or business, or any operations connected therewith, or any income arising in connection therewith, or any property occupied for the purposes thereof ;

(*b*) nothing in this subsection shall exempt a Ruler from any Federal taxation in respect of any lands, buildings or income being his personal property or personal income.

[illegible] ıxation enjoyed as of [illegible] State in respect of [illegible]

156. Where under the provisions of this Act the expenses of any court or commission, or the pension payable to or in respect of a person who has served under the Crown in India, are charged on the revenues of the Federation or the revenues of a Province, then if—

Adjustment in respect of certain expenses and pensions.

(*a*) in the case of a charge on the revenues of the Federation, the court or commission serves any of the separate needs of a Province, or the person has served wholly or in part in connection with the affairs of a Province ; or

(*b*) in the case of a charge on the revenues of a Province, the court or commission serves any of the separate needs of the Federation or another Province, or the person has served wholly or in part in connection with the affairs of the Federation or another Province, there shall be charged on and paid out of the revenues of the Province or, as the case may be, the revenues of the Federation or of the other Province, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

157. (1) The Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State sufficient moneys to enable him to make such payments as he may have to make in respect of any liability which falls to be met out of the revenues of the Federation or of the Province as the case may be.

Duty of Federation and Provinces to supply Secretary of State with funds.

(2) Without prejudice to their obligations under the preceding subsection, the Federation and every Province shall secure that there are from time to time [illegible] the High Commissioner sufficient [illegible] pensions payable out of the reve- [illegible] the case may be, in the United Kingdom or through officers accounting to the Secretary of State or to the High Commissioner.

158. (1) His Majesty in Council may make such provision as may appear to him to be necessary or proper for defining and regulating the relations between the monetary systems of India and Burma and for purposes connected with or ancillary to those purposes, and in particular, but without prejudice to the generality of this section, such provision as may appear to His Majesty to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of Part III of this Act with the approval of the Secretary of State by the Governor of Burma in Council with the Governor-General in Council or any other persons.

Provisions as to relation of Burma monetary system with India.

(2) Any sums required by an Order under this section to be paid by the Federation shall be charged on the revenues of the Federation.

159. His Majesty in Council may make provision for the grant of relief from any Federal tax on income in respect of income taxed or taxable in Burma.

Relief in respect of tax on income taxable both in India and Burma.

160. With a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic interest of Burma during that period, His Majesty may by Order in Council give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma and with respect to ancillary and related matters.

Provisions as to customs duties on India-Burma trade.

CHAPTER II.

BORROWING AND AUDIT.

Borrowing.

161. *Upon the commencement of Part III of this Act* all powers vested in the Secretary of State in Council of borrowing on the security of the revenues of India shall cease and determine, but nothing in this section affects the provisions of Part XIII of this Act with respect to borrowing in sterling by the Secretary of State.

Cessation of borrowing by Secretary of State in Council.

162. Subject to the provisions of Part XIII of this Act with respect to borrowing in sterling, the executive authority of the Federation extends to borrowing upon the security of the revenues of the Federation within such limits, if any, as may from time to time be fixed by Act of the Federal Legislature and to the giving of guarantees within such limits, if any, as may be so fixed.

Borrowing by Federal Government.

Borrowing by Provincial Governments.

163. (1) Subject to the provisions of this section the executive authority of a Province extends to borrowing upon the security of the revenues of the Province within such limits, if any, as may from time to time be fixed by the Act of the provincial Legislature and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last preceding section are not exceeded, give guarantees in respect of loans raised by, any Province and any sums required for the purpose of making loans to a Province shall be charged on the revenues of the Federation.

(3) A Province may not without the consent of the Federation borrow outside India, nor without the like consent raise any loan if there is still outstanding any part of a loan made to the Province by the Federation or by the Governor-General in Council, or in respect of which a guarantee has been given by the Federation or by the Governor-General in Council.

A consent under this subsection may be granted subject to such conditions, if any, as the Federation may think fit to impose.

(4) A consent required by the last preceding subsection shall not be unreasonably withheld, nor shall the Federation refuse, if sufficient cause is shown, to make a loan to, or to give a guarantee in respect of a loan raised by, a Province, or seek to impose in respect of any of the matters aforesaid any condition which is unreasonable, and, if any dispute arises whether a refusal of consent, or a refusal to make a loan or to give a guarantee, or any condition insisted upon, is or is not justifiable, the matter shall be referred to the Governor-General and the decision of the Governor-General in his discretion shall be final.

Loans by Federal Government to Federated States.

164. The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last but one preceding section are not exceeded, give guarantees in respect of loans raised by, any Federated State.

Application of Colonial Stock Acts to stocks issued by Federation.

165. (1) The Colonial Stock Acts, 1877 to 1900, shall, notwithstanding anything to the contrary in those Acts, apply in relation to sterling stock issued after the establishment of the Federation and forming part of the public debt of the Federation as they apply in relation to stock forming part of the public debt of any British Possession men-[illegible]

[illegible]

Act, 1921,‡ shall include any stock in relation to which the said Acts apply by virtue of this section.

(3) In paragraph [illegible] Trustee Act, 1925,§ the words "o[illegible] is payable out of, and [illegible]

Provided that, nc[illegible] by virtue of the said [illegible] III of this Act securites in which a trustee might invest trust funds [illegible] continue to be securities in which a trustee may invest such funds.

* 40 & 41 Vict c. 59
† 63 and 64 Vict. c. 62
‡ 11 and 12 Geo. 5, c. 19.
§ 15 and 16 Geo 5, c. 19

Audit and Accounts.

Auditor-General of India.

166. (1) There shall be an Auditor-General of India, who shall be appointed by His Majesty and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.

(2) The conditions of service of the Auditor-General shall be such as may be prescribed by His Majesty in Council, and he shall not be eligible for further office under the Crown in India after he has ceased to hold his office :

Provided that neither the salary of an Auditor-Gneral nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Federation and of the Provinces as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any subsequent Act of the Federal Legislature varying or extending such an Order :

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion.

(4) The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.

Provincial Auditor-General

167. (1) If a Provincial Legislature after the expiration of two years from the commencement of Part III of this Act passes an Act charging the salary of an Auditor General for that Province on the revenues of the Province, an Auditor General of the Province may be appointed by His Majesty to perform the same duties and to exercise the same powers in relation to the audit of the accounts of the Province as would be performed and exercised by the Auditor-General of India, if an Auditor-General of the Province had not been appointed :

Provided that no appointment of an Auditor General in a Province shall be made until the expiration of at least three years from the date of the Act of the Provincial Legislature by which provision is made for an Auditor-General of that Province.

(2) *The provisions of the last*
the Auditor-General of a Province a
Auditor-General of India and his s
that is to say—

(*a*) a person who is, or has been, Auditor-General of a Province shall be eligible for appointment as Auditor-General of India ;

(*b*) in subsection (3) of the said section, for the reference to the Federal Legislature there shall be substituted a reference to the Provincial Legislature, and for the reference to the Governor-General there shall be substituted a reference to the Governor ; and

(*c*) in subsection (4) of the said section for the reference to the revenues of the Federation there shall be substituted a reference to the revenues of the Province :

Provided that nothing in this section shall derogate from the power of the Auditor-General of India to give such directions in respect to the accounts of Provinces as are mentioned in the next succeeding section.

Power of Auditor-General of India to give directions as to accounts

168 The accounts of the Federation shall be kept in such form as the Auditor-General of India may, with the approval of the Governor-General, prescribe and, in so far as the Auditor-General of India may, with the like approval, give any directions with regard to

the methods or principles in accordance with which any accounts of Provinces ought to be kept, it shall be the duty of every Provincial Government to cause accounts to be kept accordingly.

Audit reports.

169. The reports of the Auditor-General of India relating to the accounts of the Federation shall be submitted to the Governor-General, who shall cause them to be laid before the Federal Legislature, and the reports of the Auditor-General of India or of the Auditor-General of the Province, as the case may be, relating to the accounts of a Province shall be submitted to the Governor of the Province, who shall cause them to be laid before the Provincial Legislature.

Auditor of Indian Home Accounts.

170. (1) There shall be an Auditor of Indian Home Accounts who shall be appointed by the Governor-General in his discretion and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.

(2) The conditions of service of the Auditor of Indian Home Accounts shall be such as may be prescribed by the Governor-General in his discretion:

Provided that neither the salary of an Auditor of Indian Home Accounts nor his rights in respect of leave of absence, pension or age of retirement shall [illegible]

[illegible] Province, as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any Act of the Federal Legislature varying or extending such an Order:

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the prior sanction of the Governor-General in his discretion.

(4) The reports of the Auditor of Indian Home Accounts relating to such transactions as aforesaid shall be submitted to the Auditor-General of India, or, in the case of transactions affecting the revenues of a Province which has an Auditor-General, to [illegible] included by any such [illegible] this Act he is required [illegible] be, to the Governor.

(5) The Auditor of Indian Home Accounts shall be subject to the general superintendence of the Auditor-General of India.

(6) The salary, allowances and pension payable to or in respect of the Auditor of Indian Home Accounts shall be charged on the revenues of the [illegible]

[illegible] performs in relation to India, and may fix the payments to be made in respect of his services from the revenues of Burma to the revenues of the Federation, and may make such incidental and consequential provision as may appear to him to be proper.

Audit of accounts relating to the discharge of the functions of the Crown in relation to Indian States.

171. The accounts relating to the discharge of the functions of the Crown in its relations with Indian States shall be audited by the Auditor-General of India, or, in so far as those accounts concern transactions in the United Kingdom, by the Auditor of Indian Home Accounts acting on his behalf and under his general superintendence, and the Auditor-General of India shall make to the Secretary of State annual reports on the accounts so audited by him or on his behalf.

CHAPTER III.

PROPERTY, CONTRACTS, LIABILITIES, AND SUITS.

Vesting of lands and buildings

172. (1) All lands and buildings which immediately before the commencement of Part III of this Act were vested in His Majesty for the purposes of the government of India shall as from that date—

(a) in the case of lands and buildings which are situate in a Province, vest in His Majesty for the purposes of the government of that Province unless they were then used, otherwise than under a tenancy agreement between the Governor-General in Council and the Government of that Province, for purposes which thereafter will be purposes of the Federal Government or of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, or unless they are lands and buildings formerly used for such purposes as aforesaid, or intended or formerly intended to be so used, and are certified by the Governor-General in Council or, as the case may be, His Majesty's Representative, to have been retained for future use for such purposes, or to have been retained temporarily for the purpose of more advantageous disposal by sale or otherwise ;

(b) in the case of lands and buildings which are situate in a Province but do not by virtue of the preceding paragraph vest in His Majesty for the purposes of the government of that Province, and in the case of lands and buildings which are situate in India elsewhere than in a Province, vest in His Majesty for the purposes of the government of the Federation or for the purposes of the exercise of the functions of the Crown in its relations with Indian States, according to the purpose for which they were used immediately before the commencement of Part III of this Act ; and

(c) in the case of lands and buildings which are situate elsewhere than in India (except lands and buildings situate in Burma or Aden), vest in His Majesty for the purposes of the government of the Federation or, if they were immediately before the commencement of Part III of this Act used for purposes of the department of the Secretary of State in Council, for the purposes of His Majesty's Government in the United Kingdom

(2) Except with the consent of the Governor General, effect shall not be given to any proposal for the sale of any lands or buildings which by virtue of this section are vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, or to any proposal for the diversion of any such lands and buildings to uses not connected with the discharge of the functions of the Crown in relation to India or Burma.

(3) The lands and buildings vested in His Majesty by virtue of this section for the purposes of His Majesty's Government in the United Kingdom shall be under the management of the Commissioners of Works, and, subject to the provisions of subsection (2) of this section, the provisions of the Acts relating to the Commissioners of Works shall apply in relation to those lands and buildings as if they had been acquired by the Commissioners in pursuance of those Acts.

(4) The provisions of this section shall apply in relation to the contents of buildings vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, other than any money or securities, as they apply in relation to the buildings themselves :

Provided that, in the case of such articles and classes of articles as may be agreed upon between the Secretary of State and the Governor General, the provisions of subsection (2) of this section shall not apply and, notwithstanding anything in subsection (3) of this section, the contents of those buildings shall be under the control of the Secretary of State.

(5) Any question which may arise within the five years next following the commencement of Part III of this Act as to the purposes for which any lands

or buildings are by virtue of this section vested in His Majesty may be determined by His Majesty in Council.

Provisions as to other property.

173. (1) Subject to the provisions of this and the last preceding section, all property vested in His Majesty which by virtue of any delegation from the Secretary of State in Council or otherwise is immediately before the commencement of Part III of this Act in the possession or under the control of, or held on account of, the Governor-General in Council or any Local Government shall, as from the commencement of Part III of this Act, vest in His Majesty—

(*a*) for the purposes of the Government of the Federation ; or

(*b*) for the purposes of the exercise of the functions of the Crown in its relations with Indian States ; or

(*c*) for the purposes of the Government of a Province,

according as the purposes for which the property was held immediately before the commencement of Part III of this Act will thereafter be purposes of the Government of the Federation, purposes of His Majesty's Representative for the exercise of the said functions of the Crown or purposes of the Government of a Province :

commencement of Part III

of ch the Governor-General in

C. ... Majesty for the purposes of the Government of the Federation ;

(ii) all credits and debits of the Local Government of any Governor's Province (other than Burma) in account with the Governor-General in Council shall be deemed to be credits and debits of the corresponding Province under this Act in account with the Federation.

(2) Subject as aforesaid, all other property vested in His Majesty and under the control of the Secretary of State in Council immediately before the commencement of Part III of this Act shall as from the commencement of Part III of this Act vest in His Majesty for the purposes of the Government of the Federation, for the purposes of the exercise of the functions of the Crown in its relations

of a Province,

to the circums

to and shall deal with the property accordingly.

(3) In this section "property" includes money, securities, bank balances and movable property of any description.

(4) Arrears of any taxes outstanding immediately before the commencement of Part III of this Act shall be deemed to be due to and may be recovered by the Federal Government or a Provincial Government according as the proceeds of any such tax imposed after the commencement of Part III of this Act would be due to and recoverable by the Federal Government or the Provincial Government

(5) This section shall apply in relation to any equipment, stores, moneys, bank balances and other property held in connection with His Majesty's Indian forces stationed in Burma (not being forces raised in Burma) as it applies in relation to property held for

of the Federation, but, save a

property situate in Burma or ...

to any property which by virtue of any delegation from the Secretary of State in Council or otherwise is, immediately before the commencement of Part III of this Act, in the possession or under the control of, or held on account of, the Local Government of Burma or Aden.

(6) Nothing in this section shall effect any adjustments made or to be made by or under this Act by reason of the creation before the commencement of Part III of this Act of the Provinces of Orissa and Sind.

Property accruing by escheat or lapse, or as bona vacantia.

174. Subject as hereinafter provided, any property in India accruing to His Majesty by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a Province, vest in His *Majesty for the purposes of the Government of that Province*, and *shall* in any other case vest in His Majesty for the purposes of the government of the Federation :

Provided that any property which at the date when it accrued to His Majesty was in the possession or under the control of the Federal Government or the Government of a Province shall, according as the purposes for which it was then used or held were purposes of the Federation or of a Province, vest in His Majesty for the purposes of the government of the Federation or for the purposes of the government of that Province

Power to acquire property and to make contracts, &c

175. (1) The executive authority of the Federation and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in His Majesty for the purposes of the government of the Federation or of the Province, as the case may be, and to the purchase or acquisition of property on behalf of His Majesty for those purposes respectively, and to the making of contracts :

Provided that any land or building used as an official residence of the Governor-General or a Governor shall not be sold, nor any change made in the purposes for which it is being used, except with the concurrence, in his discretion, of the Governor-General or the Governor, as the case may be

(2) All property acquired for the purposes of the Federation or of a Province or of the exercise of the functions of the Crown in its relations with *Indian States, as the case may be, shall vest in His Majesty for those purposes.*

(3) Subject to the provisions of this Act with respect to the Federal Railway Authority, all contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made by the Governor-General, or by the Governor of the Province, as the case may be, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor-General or Governor by such persons and in such manner as he may direct or authorise.

(4) Neither the Governor-General, nor the Governor of a Province, nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Act, or for the purposes of the Government of India Act or of any Act repealed thereby, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Suits and proceedings

176. (1) The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this chapter, may, subject to any provisions which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed.

(2) Rules of court may provide that, where the Federation, the Federal Railway Authority, or a Province sue or are sued in the United Kingdom, service of all proceedings may be effected upon the High Commissioner for India or such other representative in the United Kingdom of the Federation, Authority or Province, as may be specified in the rules

Existing contracts of Secretary of State in Council.

177. (1) Without prejudice to the special provisions of the next succeeding section relating to loans, guarantees and other financial obligations, any contract made, before the commencement of Part III of this Act by, or on behalf of, the Secretary of State in Council shall, as from that date—

(*a*) if it was made for purposes which will after the commencement of Part III of this Act be purposes of the Government of a Province, have effect as if it had been made on behalf of that Province; and

(*b*) in any other case have effect as if it had been made on behalf of the Federation,

and references in any such contract to the Secretary of State in Council shall be construed accordingly, and any such contract may be enforced in accordance with the provisions of the next but one succeeding section.

(2) This section does not apply in relation to contracts solely in connection with the affairs of Burma or Aden, or solely for purposes which will after the commencement of Part III of this Act be purposes of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States

Special provisions as to existing loans, guarantees and other financial obligations.

178. (1) All liabilities in respect of such loans, guarantees and other financial obligations of the Secretary of State in Council as are outstanding immediately before the commencement of Part III of this Act and were secured on the revenues of India shall, as from that date, be liabilities of the Federation and shall be secured upon the revenues of the [illegible]

(2) All ena[illegible]

obligations of [illegible]

those loans, guarantees and obligations, continue to have effect with the substitution therein, except in so far as the context otherwise requires, of references to the Secretary of State for references to the Secretary of State in Council, and with such other modifications and such adaptations as His Majesty in Council may deem necessary.

(3) No deduction in respect of taxation imposed by or under any existing Indian law or any law of the Federal or a Provincial Legislature shall be made from any payment of principal or interest in respect of any securities, the interest whereon is payable in sterling, being a payment which would, but for the provisions of this Act, have fallen to be made by the Secretary of State in Council.

(4) If in the case of any Local Government in India there are outstanding immediately before the commencement of Part III of this Act any loans or other financial obligations secured upon the revenues of the Province, all liabilities in respect of those loans and obligations shall, as from that date, be liabilities of the Government of, and shall be secured upon the revenues of, the corresponding Province under this Act.

(5) Any liabilities in respect of any such loan, guarantee or financial obligation as is mentioned in this section may be enforced in accordance with the provisions of the next succeeding section.

(6) The provisions of this section apply to the liabilities of the Secretary of State in Council in respect of the Burma Railway three percent. Debenture Stock, but, save as aforesaid, do not apply to any liability solely in connection with the affairs of Burma or Aden.

Legal proceedings as to certain matters.

179. (1) Any proceedings which, if this Act had not been passed, might have been brought against the Secretary of State in Council may, in the case of any liability arising before the commencement of Part III of this Act or arising under any contract or statute made or passed before that date,

be brought against the Federation or a Province, according to the subject-matter of the proceedings, or, at the option of the person by whom the proceedings are brought, against the Secretary of State, and any sum ordered to be paid by way of debt, damages or costs in any such proceedings, and any costs or expenses incurred in or in connection with the defence thereof, shall be paid out of the revenues of the Federation or the Province, as the case may be, or, if the proceedings are brought against the Secretary of State, out of such revenues as the Secretary of State may direct.

The provisions of this subsection shall apply with respect to proceedings arising under any contract declared by the terms thereof to be supplemental to any such contract as in mentioned in those provisions as they apply in relation to the contracts so mentioned

(2) If at the commencement of Part III of this Act any legal proceedings are pending in the United Kingdom or in India to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council, and the provisions of sub-section (1) of this section shall apply in relation to sums ordered to be paid, and costs or expenses incurred, by the Secretary of State or the Secretary of State in Council in or in connection with any such proceeding as they apply in relation to sums ordered to be paid in, and costs or expenses incurred in or in connection with the defence of, proceedings brought against the Secretary of State under the said sub-section (1).

(3) Any contract made in respect of the affairs of the Federation or a Province by or on behalf of the Secrtary of State after the commencement of Part III of ,

be brought

(3) Any contract made after the commencement of Part III of this Act on behalf of His Majesty solely in connection with the exercise of the said functions of the Crown shall, if it is such a contract as would have been legally enforceable by or against the Secretary of State in Council, be legally enforceable by or against the Secretary of State.

(4) Any sums ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings as are mentioned in this section and any costs or expenses incurred by him in or in connection with the prosecution or defence thereof shall be deemed to be sums required for the discharge of the functions of the Crown in its relations with Indian States, and any sum received by the Secretary of State by virtue of any such proceedings shall be paid or credited to the Federation.

PART VIII.

THE FEDERAL RAILWAY AUTHORITY.

Executive authority in respect of railways to be exercised by Federal Railway Authority.

181. (1) The executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways shall be exercised by a Federal Railway Authority (hereinafter referred to as "the Authority").

(2) The said executive authority extends to the carrying on in connection with any Federal railways of such Authority, it is expedient should be the making and carrying into effect o carrying on by those persons of such undertakings:

Provided that, as respects their powers under this subsection, the Authority shall be subject to any relevant provisions of any Federal, Provincial or existing Indian law, and to the relevant provisions of the law of any Federated State, but nothing in this subsection shall be construed as limiting the provisions of Part VI of this Act regulating the relations of the Federation with Provinces and States.

(3) Notwithstanding anything in this section, the Federal Government or its officers shall perform in regard to the construction, equipment, and operation of railways such functions for and of persons operating the rail the causes of accidents, as in ti... performed by persons independent of the Authority and of any railway administration.

So much of Part X of this Act as provides that powers in relation to railway services of the Federation shall be exercised by the Authority shall not apply in relation to officers of the Federal Government employed in the performance of any of the functions mentioned in this subsection.

Composition, &c. of Railway Authority.

182. Not less than three-sevenths of the members of the Authority shall be persons appointed by the Governor General in his discretion, and the Governor General shall in his discretion appoint a member of the Authority to be the President thereof.

(2) Subject as aforesaid, the provisions of the Eighth Schedule to this Act, as supplemented or amended by any Act of the Federal Legislature for the time being in force, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Authority, and with respect to the Authority's proceedings, executive staff and liability to income tax:

Provided that, except with the previous sanction of the Governor-General in his discretion, there shall not be introduced into, or moved in, either Chamber

of the Federal Legislature any Bill or any amendment for supplementing or amending the provisions of the said Schedule.

Directions and principles to be observed by Railway Authority.

183. (1) The Authority in discharging their functions under this Act shall act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provisions for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this Part of this Act.

(2) In the discharge of their said functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government

If any dispute arises under this subsection between the Federal Government and the Authority as to whether a question is or is not a question of policy, *the decision of the Governor-General in his discretion shall be final.*

(3) The provisions of subsection (1) of this section shall apply in relation to the discharge by the Federal Goverment of their functions with respect to railways as they apply in relation to the fuctions of the Authority, but nothing in this subsection shall be construed as limiting the powers of the Governor-General under the next succeeding subsection.

(4) The provisions of this Act relating to the special responsibilities of the Governor-General, and to his duty as regards certain matters to exercise his functions in his discretion or to exercise his individual judgment, shall apply as regards matters entrusted to the Authority as if the executive authority of the Federation in regard to those matters were vested in him, and as if the functions of the Authority as regards those matters *were the functions of ministers, and the Governor-General may issue to* the Authority such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he is by or under this Act required to act in his discretion or to exercise his individual judgment, and the Authority shall give effect to any directions so issued to them.

Conduct of business between Railway Authority and Federal Government.

184. (1) The Governor-General exercising his individual judgment, but after consultation with the Authority, may make rules for the more convenient transaction of business arising out of the relations between the Federal Government and the Authority.

(2) The rules shall include provisions requiring the Authority to transmit to the Federal Government all such information with respect to their business as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular provisions requiring the Authority and their chief executive officer to bring to the notice of the Governor-General any matter under consideration by the Authority or by that officer which involves, or appears to them or him likely to involve, any special responsibility of the Governor General.

Acquisition and sale of land, contracts and working agreements.

185. (1) Except in such classes of case as may be specified in regulations to be made by the Federal Government, the Authority shall not acquire or dispose of any land, and, when it is necessary for the Authority to acquire compulsorily any land for the purposes of their functions, the Federal Government shall cause that land to be acquired on their behalf and at their expense.

(2) Contracts made by or on behalf of the Authority shall be enforceable by or against the Authority and not by or against the Federation, and, subject to any provision which may hereafter be made by Act of

lature, the Authority may sue and be sued in the like manner and in the like cases as a company operating a railway may sue and be sued:

Provided that this subsection does not apply in relation to any contract declared by its terms to be supplemental to a contract made before the establishment of the Authority, and any such supplemental contract may be enforced in any manner in which the principal contract may be enforced.

(3) The Authority may make working agreements with, and carry out working agreements made with, any Indian State or person owning or operating any railway in India, or in territories adjacent to India with respect to the persons by whom and the terms on which any of the railways with which the parties are respectively concerned shall be operated.

Finance of the Railway Authority.

186. (1) The Authority shall establish, maintain and control a fund (which shall be known as the "Railway Fund") and all moneys received by the Authority, whether on revenue account or on capital account, in the discharge of their functions and all moneys provided, whether on revenue account or on capital account, out of the revenues of the Federation to enable them to discharge those functions shall be paid into that Fund, and all expenditure, whether on revenue account or on capital account, required for the discharge of their functions shall be defrayed out of that Fund:

Provided that nothing in this subsection shall prevent the Authority from establishing and maintaining separate provident funds for the benefit of persons who are or have been employed in connection with railways.

(2) The Receipts of the Authority on revenue account in any financial year shall be applied in—

(*a*) defraying working expenses;

(*b*) meeting payments due under contracts or agreements to railway undertakings,

(*c*) paying pensions, and contributions to provident funds;

(*d*) repaying to the revenues of the Federation so much of any pensions and contributions to provident funds charged by this Act on those revenues as is attributable to service on railways in India;

(*e*) making due provision for maintenance, renewals, improvements and depreciation;

(*f*) making to the revenues of the Federation any payments by way of interest which they are required by this Part of this Act to make; and

(*g*) defraying other expenses properly chargeable against revenue in that year.

(3) Any surpluses on revenue account shown in the accounts of the Authority shall be apportioned between the Federation and the Authority in accordance with a scheme to be prepared, and from time to time reviewed, by the Federal Government, or, until such a scheme has been prepared, in accordance with the principles which immediately before the establishment of the Authority regulated the application of surpluses in railway accounts, and any sum apportioned to the Federation under this subsection shall be transferred accordingly and shall form part of the revenues of the Federation.

(4) The Federation may provide any moneys, whether on revenue account or capital account, for the purposes of the Railway Authority, but, where any moneys are so provided, the provision thereof shall be deemed to be expenditure and shall accordinglyly be shown as such in the estimates of expenditure laid before the Chambers of the Legislature.

Provisions as to certain obligations of the Railway Authority.

187. (1) There shall be deemed to be owing from the Authority to the Federation such sum as may be agreed or, in default of agreement, determined by the Governor-General in his discretion, to be equivalent to the amount of the moneys provided, whether before or after the passing of this Act, out of the revenues of India or of the Federation

for capital purposes in connection with railways in India (exclusive of Burma) and the Authority shall out of their receipts on revenue account pay to the Federation interest on that amount at such rate as may be so agreed or determined, and also make payments in reduction of the principal of that amount in accordance with a repayment scheme so agreed or determined.

For the purposes of this subsection, where the Secretary of State in Council has assumed or incurred any obligation in connection with any such railways, he shall be deemed to have provided for the said purposes an amount equal to the capital value of that obligation as shown in the accounts of the Government of India immediately before the establishment of the Authority.

Nothing in this subsection shall be construed as preventing the Authority from making payments to the Federation in reduction of the principal of any such amount as aforesaid out of moneys other than receipts on revenue account.

(2) It shall be an obligation of the Authority to repay to the Federation any sums defrayed out of the revenues of the Federation in respect of any debt, damages, Costs or expenses in or in connection with, any proceedings brought or continued by or against the Federation or against the Secretary of State under Part VII of this Act in respect of railways in India.

(3) It shall be an obligation of the Authority to pay to any Province or Indian State such sums as may be equivalent to the expenses incurred by that Province or State in the provision of police required for the maintenance of order on federal railway premises, and any question which may arise between the Authority and a Province or State as to the amount of any expenses so incurred shall be determined by the Governor-General in his discretion.

Investment of funds of Railway Authority.

188 Subject to such conditions, if any, as may be prescribed by the Federal Government, the Authority may from time to time invest any moneys in the railway fund or any provident fund which are not for the time being required to meet expenses properly defrayable out of that fund, and may, subject as aforesaid, from time to time transfer and realise investments made by them

Special provisions as to certain existing funds

189. (1) Nothing in the foregoing provisions of this Part of this Act shall be construed as entitling the Authority to require that any moneys which immediately before the establishment of the Authority were held by the Governor-General in Council on account of any railway depreciation fund, reserve fund or provident fund shall be transferred to the Authority for investment by them, but the Authority may from time to time require the transfer to themselves of so much of any such fund as they require to defray expenditure chargeable against that fund, and the Federal Government shall credit each fund with interest on the untransferred balance thereof at such rate as may be agreed, or, in default of agreement, determined by the Governor-General in his discretion

(2) In this section references to any such fund as aforesaid shall be construed as references to so much of that fund as is not attributable to the railways of Burma

Audit and annual reports.

190. (1) *The accounts of the receipts and expenditure of the Authority* shall be audited and certified by, or on behalf of, the Auditor-General of India.

(2) The Authority shall publish annually report of their operations during the preceeding year and a statement of accounts in a form approved by the *Auditor-General.*

Railway Rates Committee.

191. The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connection with any dispute between perso

using, or desiring to use, a railway and the Authority as to rates or traffic facilities which he may require the Authority to refer to the committee.

Bills and amendments for regulating rates and fares to require recommendation of Governor-General.

192. A Bill or amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either Chamber of the Federal Legislature except on the recommendation of the Governor General.

Obligation of Railway Authority and Federated States to afford mutual traffic facilities and to avoid unfair discrimination, &c.

193. (1) It shall be the duty of the Authority and every Federated State so to exercise their powers in relation to the railways with which they are respectively concerned as to

and as to secure that there shall

unfair discrimination, by the granting of undue preferences or otherwise, and no unfair or uneconomic competition

(2) Any complaint by the Authority against a Federated State or by a Federated State against the Authority on the ground that the provisions of the preceding subsection have not been complied with shall be made to and determined by the Railway Tribunal.

Appeal by State to Railway Tribunal from certain directions of Railway Authority.

194. If the Authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic or maximum or minium rates and fares or station or service terminal charges, give any direction to that

the direction

on the State a

reasonable, and any such complaint shall be determined by the Railway Tribunal.

Construction and reconstruction of railways.

195. (1) The Governor-General acting in his discretion shall make rules requiring the Authority and any Federated State to give notice in such cases as the rules may prescribe of any proposal for constructing a railway or for altering the alignment or gauge of a railway, and to deposit plans.

(2) The rules so made shall contain provisions enabling objections to be lodged by the Authority or by a Federated State on the ground that the carrying out of the proposal will result in unfair or uneconomic competition with a Federal railway or a State railway, as the case may be, and, if an objection so lodged is not withdrawn within the prescribed time, the Governor General shall refer to the Railway Tribunal the question whether the proposal ought to be carried into effect, either without modification or with such modification as the Tribunal may approve, and the proposal shall not be proceeded with save in accordance with the decision of the Tribunal.

(3) This section shall not apply in any case where the Governor-General in his discretion certifies that for reasons connected with defence effect should, or, should not, be given to a proposal.

Railway Tribunal.

196. (1) There shall be a Tribunal (in this Act referred to as "the Railway Tribunal") consisting of a President and two other persons to be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway, administrative, or business experience.

(2) The President shall be such one of the judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consultation with the Chief Justice of India and shall hold office for such period of not less than five years as may be specified in the appointment, and shall be eligible for re-appointment for a further period of five years or any less period :

Provided that, if the President ceases to be a judge of the Federal Court, he shall thereupon cease to be President of the Tribunal and, if he is for any reason temporarily unable to act, the Governor General in his discretion may after the like consultation appoint another judge of the Federal Court to act for the time being in his place.

(3) It shall be the duty of the Railway Tribunal to exercise such jurisdiction as is conferred on it by this Act, and for that purpose the Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment of compensation or damages and of costs and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require, and it shall be the duty of the Authority and of every Federated State and of every other person or authority affected thereby to give effect to any such order.

(4) An appeal shall lie to the Federal Court from any decision of the Railway Tribunal on a question of law, but no appeal shall lie from the decision of the Federal Court on any such appeal.

(5) The Railway Tribunal or the Federal Court, as the case may be, may, on application made for the purpose, if satisfied that in view of an alteration in the circumstances it is proper so to do, vary or revoke any previous order made by it.

(6) The President of the Railway
Governor-General in his discretion, mak
cedure of the Tribunal and the fees to b

(7) Subject to the provisions of this section relating to appeals to the Federal Court, no court shall have any jurisdiction with respect to any matter with respect to which the Railway Tribunal has jurisdiction.

(8) There shall be paid out of the revenues of the Federation to the members of the Railway Tribunal other than the President such remuneration as may be determined by the Governor-General in his discretion, and the administrative expenses of the Railway Tribunal, including any such remuneration as aforesaid, shall be charged on the revenues of the Federation, and any fees or other moneys taken by the tribunal shall form part of those revenues

The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Railway Tribunal in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

Rights of railway companies in respect of arbitration under contracts.

197. (1) Without prejudice to the general provisions of this Act with respect to rights and liabilities under contracts made by or on behalf of the Secretary of State in Council, the provisions of this section shall have effect with respect to any contract so made with a railway company which immediately before the commencement of Part III of this Act was operating a railway in British India.

(2) If a dispute arises under any such contract between the railway company concerned and either the Authority or the Federal Government, and if the matter in dispute is of such a nature that under the contract the company might require, or, but for some provision of this Act, might have required, it to be submitted to arbitration, the dispute shall be deemed to have arisen between the company and the Secretary of State, and the provisions of the contract relating to the determination of such a dispute shall have effect with the substitution of the Secretary of State for the Secretary of State in Council.

Any award made in an arbitration under the foregoing provisions of this section and any settlement of the dispute agreed to by the Secretary of State with the concurrence of his advisers shall be binding on the Federal Government and the Authority, and any sum which the Secretary of State may become liable or may so agree to pay by way of debt, damage or costs, and any costs or expenses incurred by him in connection with the matter, shall be paid out of the revenues of the Federation and shall be charged on those revenues but shall be a debt due to the Federation from the Authority.

Railways in Indian States which have not federated.

198. If and in so far as His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States may entrust to the Authority the performance of any functions in relation to railways in an Indian State which is not a Federated State, the Authority shall undertake the performance of those functions.

Official directors of Indian railway companies.

199. Any powers of the Secretary of State in Council with respect to the appointment of directors and deputy directors of Indian railway companies shall be exercised by the Governor General in his discretion after consultation with the Authority.

PART IX.

THE JUDICATURE.

CHAPTER I.

THE FEDERAL COURT.

Establishment and constitution of Federal Court.

200. (1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other judges as His Majesty may deem necessary, but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six.

(2) Every judge of the Federal Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty-five years :

Provided that—

(*a*) a judge may by resignation under his hand addressed to the Governor-General resign his office :

(*b*) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—

(*a*) has been for at least five years a judge of a High Court in British India or in a Federated State ; or

(*b*) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing ; or

(*c*) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession.

Provided that—

(i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader ; and

(ii) in relation to the Chief Justice of India, for the references in paragraphs (*b*) and (*c*) of this subsection to ten years there shall be substituted references to fifteen years.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

Salaries, &c. of judges.

201. The judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council :

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Temporary appointment of acting Chief Justice

202. If the office of Chief Justice of India becomes vacant, or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor-General may in his discretion appoint for the purpose.

Seat of Federal Court.

203. The Federal Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor General, from time to time appoint.

Original jurisdiction of Federal Court.

204. (1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :

Provided that the said jurisdiction shall not extend to—

(*a*) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State ; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State ; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute ;

(*b*) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise of its original jurisdiction shall pronounce any judgment other than a declaratory judgment.

205. (1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its accordingly.

Appellate jurisdiction of Federal Court in appeals from High Courts in British India.

party in the case may appeal to [illegible] such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

206. (1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

Power of Federal Legislature to enlarge appellate jurisdiction.

(*a*) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(*b*) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding subsection, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

207. (1) An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State or arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature.

Appellate jurisdiction of Federal Court in appeals from High Courts in Federated States.

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein

Appeals to His Majesty in Council.

208. An appeal may be brought to His Majesty in Council from a decision of the Federal Court—

[illegible] Federal Court given in the exercise of its origi[illegible] which concerns the interpretation of this Act [illegible] made thereunder, or the extent of the legislative

or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act in relation to the administration in any State of a law of the Federal Legislature, without leave, and

(b) in any other case, by leave of the Federal Court or of His Majesty in Council.

Form of judgment on appeal

209. (1) The Federal Court shall, where it allows an appeal, remit the case to the court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against, and the court from which the appeal was brought shall give effect to the decision of the Federal Court

(2) Where the Federal Court upon any appeal makes any order as to the costs of the proceedings in the Federal Court, it shall, as soon as the amount of the costs to be paid is ascertained, transmit its order for the payment of that sum to the court from which the appeal was brought and that court shall give effect to the order.

(3) The Federal Court may, subject to such terms or conditions as it may think fit to impose, order a stay of execution in any case under appeal to the Court, pending the hearing of the appeal, and execution shall be stayed accordingly.

Enforcement of decrees and orders of Federal Court and orders as to discovery, &c.

210 (1) All authorities, civil and judicial, *throughout the Federation, shall act in aid of* the Federal Court.

(2) The Federal Court shall, as respects British India and the Federated States, have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of court, which any High Court in British India has power to make as respects the territory within its jurisdiction, and any such orders, and any orders of the Federal Court as to the costs of and incidental to any proceedings therein, *shall be enforceable by all courts and authorities* in every part of British India or of any Federated State as if they were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in that part

[illegible] h respect to costs as is mentioned in [illegible], or

(b) shall, as regards a Federated State apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal Legislature *of such provision as is mentioned in this chapter for enlarging the* appellate jurisdiction of the Federal Court.

Letters of request to Federated States.

211. Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.

Law declared by Federal Court and Privy Council to be binding on all courts.

212. The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed [illegible] o far as res- [illegible] ion of this Act or any Order in Council [illegible] which

Federal Legislature has power to make laws in relation to the State, in any Federated State.

213. (1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that court for consideration, and the court may, after such hearing as they think fit, report to the Governor-General thereon.

Power of Governor-General to consult Federal Court.

(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

214. (1) The Federal Court may from time to time, with the approval of the Governor-General in his discretion, make [illegible] e and procedure of the co[illegible] e the court, as to the [illegible] as to the costs of and incidental to any proceedings in the court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

Rules of court, &c.

(2) Rules made under this section may fix the minimum number of judges who are to sit for any purpose, so however that no case shall be decided by less than three judges:

Provided that, if the F[illegible] tioned in this chapter for [illegible] rules shall provide for the co[illegible] purpose of deciding all cases which would have been within the jurisdiction of the court even if its jurisdiction had not been so enlarged.

(3) Subject to the provisions of any rules of court, the Chief Justice of India shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose

(4) No judgment shall be delivered by the Federal Court save in open court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing of this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment.

(5) All proceedings in the Federal Court shall be in the English language.

215. The Federal Legislature may make provision by Act for conferring upon the Federal Court such supplemental powers not inconsistent with any of the provisions of this Act as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Act.

Ancillary powers of Federal Court.

216. (1) The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of the Federation, and any fees or other moneys taken by the court shall form part of those revenues.

Expenses of Federal Court

(2) The Governor General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

217. References in any provision of this Part of this Act to a High Court in a Federated State shall be construed as references to any Court which His Majesty may, after communication with the Ruler of the State, declare to be a High Court for the purposes of that provision.

Construction of references to High Courts in States.

218. Nothing in this chapter shall be construed as conferring, or empowering the Federal Legislature to confer, any right of appeal to the Federal Court in any case in which a High Court in British India is exercising jurisdiction on appeal from a court outside British India, or as affecting any right of appeal in any such case to His Majesty in Council with or without leave.

Savings.

CHAPTER II.

THE HIGH COURTS IN BRITISH INDIA.

219. (1) The following courts shall in relation to British India be deemed to be High Courts for the purposes of this Act, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore and Patna, the Chief Court in Oudh, the Judicial Commissioner's Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind, any other court in British India constituted or reconstituted under this chapter as a High Court, and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act:

Meaning of 'High Court.'

Provided that, if provision has been made before the commencement of Part III of this Act for the establishment of a High Court to replace any court or courts mentioned in his sub-section, then as from the establishment of the new court this section shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced

(2) The provisions of this chapter shall apply to every High Court in British India.

220 (1) Every High Court shall be a court of record and shall co sist of a chief justice and such other judges as His Majesty may from time to time deem it necessary to appoint:

Constitution of High Courts.

Provided that the judges so appointed together with any additional judges appointed by the Governor-General in accordance with the following provisions of this chapter shall at no time exceed in number such maximum number as His Majesty in Council may fix in relation to that Court

(2) Every judge of a High Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty years:

Provided that—

(a) a judge may by resignation under his hand addressed to the Governor resign his office;

(b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of a High Court unless he—

(a) is a barrister of England or Northern Ireland, of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of at least ten years' standing, or

(*b*) is a member of the Indian Civil Service of at least ten years' standing who has for at least three years served as, or exercised the powers of, a district judge ; or

(*c*) has for at least five years held a judicial office in British India not inferior to that of a subordinate judge, or judge of a small cause court ; or

(*d*) has for at least ten years been a pleader of any High Court, or of two or more such Courts in succession :

Provided that a person shall not, unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader, be qualified for appointment as Chief Justice of any High Court contituted by letters patent until he has served for not less than three years as a judge of a High Court.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him on oath according to the form set out in that behalf in the Fourth Schedule to this Act.

Salaries, &c of judges

221. The judges of the several High Courts shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council :

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment.

Temporary and additional judges

222. (1) If the office of chief justice of a High Court becomes vacant, or if any such chief justice is by reason of absence, or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the chief justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor-General may in his discretion think fit to appoint for the purpose

(2) If the office of any other judge of a High Court becomes vacant, or if any such judge is appointed to act temporarily as a chief justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor-General may in his discretion appoint a person duly qualified for appointment as a judge to act as a judge of that court, and the person so appointed shall, unless the Governor-General in his discretion thinks [illegible] fit to revoke his [illegible] some person app[illegible] duties thereof, or [illegible]

(3) If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court it appears to the Governor-General that the number of the judges of the court should be for the time being increased, the Governor General in his discretion may, subject to the foregoing provisions of this chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify.

Jurisdiction of existing High Courts.

223. Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of

powers conferred on that Legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of Part III of this Act.

Administrative functions of High Courts.

224. (1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

Transfer of certain cases to High Court for trial.

225. (1) If on an application made in accordance with the provisions of this section a High Court is satisfied that a case pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power.

(2) An application for the purposes of this section shall not be made, except in relation to a Federal Act, by the Advocate-General for the Federation and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province.

Jurisdiction in revenue matters.

226. (1) Until otherwise provided by Act of the appropriate Legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

(2) A Bill or amendment for making such provision asaforesaid shall not be introduced into or moved in a Chamber of the Federal or a Provincial Legislature without the previous sanction of the Governor-General in his discretion or, as the case may be, of the Governor in his discretion.

Proceedings of High Courts to be in English.

227 All proceedings in every High Court shall be in the English language.

Expenses of High Courts.

228. (1) The administrative expenses of a High Court including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court and the salaries and allowances of the judges of the court shall be charged upon the revenues of the Province, and any fees or other moneys taken by the shall form part of those revenues.

(2) The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature.

Power of His Majesty to constitute or reconstitute High Court by letters patent.

229. (1) His Majesty, if the Chamber or Chambers of the Legislature of any Province present an address in that behalf to the Governor of the Province for submission to His Majesty, may by letters patent constitute a High Court for that Province or any part thereof or reconstitute in like manner any existing High Court for that Province or for any part thereof, or, where there are two High Courts in that Province, amalgamate those courts.

(2) Where any Court is reconstituted, or two Courts are amalgamated, as aforesaid, the letters patent shall provide for the continuance in their respective offices of the existing judges, officers and servants of the Court or Courts, and for the carrying on before the reconstituted Court or the new Court of all pending matters, and may contain such other provisions as may appear to His Majesty to be necessary by reason of the reconstitution or amalgamation

Extraprovincial jurisdiction of High Courts.

230. (1) His Mejesty in Council may, if satisfied that an agreement in that behalf has been made between the Governments concerned, extend the jurisdiction of a High Court in any Province to any area in British India not forming part of that Province, and the High Court shall thereupon have the same jurisdiction in relation to that area as it has in relation to any other area in relation to which it exercises jurisdiction.

(2) Nothing in this section affects the provisions of any law or letters patent in force immediately before the commencement of Part III of this Act empowering any High Court to exercise jurisdiction in relation to more than one Province or in relation to a Province and an area not forming Part of any Province.

(3) Where a High Court exercises jurisdiction in relation to any area or areas outside the Province in which it has its principal seat, nothing in this Act shall be construed—

(a) as empowering the Legislature of the Province in which the Court has its principal seat to increase, restrict or abolish that jurisdiction ; or

(b) as preventing the Legislature having power to make laws in that behalf for any such area from passing such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area.

Saving and definitions

231. (1) Any judge appointed before the commencement of Part III of this Act to any High Court shall continue in office and shall be deemed to have been appointed under this Part of this Act, but shall not by virtue of this Act be required to relinquish his office at any earlier age than he would have been required so to do, if this Act had not been passed.

(2) Where a High Court exercises jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of a Province, references in this chapter to the Governor in relation to the Judges and expenses of a High Court and references to the revenues of the Province shall be construed as references to the Governor and the revenues of the Province in which the Court has its principal seat, and the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor of the Province in which the subordinate court is situate, or, if it is situate in an area not forming part of a Province by the Governor-General.

PART X.

THE SERVICES OF THE CROWN IN INDIA.

CHAPTER I

Defence Services.

Pay, &c., of Commander-in-Chief.

232. The pay and allowances of the Commander-in Chief of His Majesty's Forces in India and the other conditions of his service shall be such as *His Majesty in Council* may *direct*.

Control of His Majesty as to defence appointments.

233. (1) His Majesty in Council may require that appointments to such of offices connected with defence as he may specify shall be made by him or in such manner as he may direct.

(2) *Nothing in this section derogates from any power vested in His Majesty* by virtue of any Act or by virtue of his Royal Prerogative.

Eligibility for commissions in Indian Forces.

234. The power of His Majesty, and of any person authorized in that behalf by His Majesty, to grant commissions in any naval, military or air force raised in India extends to the granting of a commission in any *such force to any person who might be, or has been, lawfully enlisted or enroll*ed in that force.

Control of Secretary of State *with respect to conditions of* service.

235. Without prejudice to the generality of the powers conferred on him by this Act, the Secretary of State may, acting with the concurrence of his advisers, from time to time specify what rules, regulations and orders affecting the conditions of service of all or any of His Majesty's Forces in India shall be made only with his previous approval.

Saving of rights of appeal.

236. Nothing in this Act affects any right of appeal which members of His Majesty's Forces in India enjoyed immediately before the passing of this Act, and the Secretary of State may entertain any such memorial from a member of those Forces as the Secretary of State, or the Secretary of State in Council, might previously *have entertained*.

Pay, &c., of members of forces to be charged *on* Federal revenues.

237. Any sums payable out of the revenues of the Federation in respect of *pay, allowances, pensions or other sums payable* to, or in respect of, persons who are serving, or have served, in *His Majesty's forces shall* be charged on those revenues, but nothing herein contained shall be construed as limiting the interpretation of the general provisions of this Act charging on the said revenues expenditure with respect to defence.

Provisions as to certain civilian personnel.

238. The provisions of the three last preceding sections shall apply in *relation to persons who, not being members of* His Majes'y's forces, hold, or have held, posts in India connected with the equipment or adminis*tration of those forces or otherwise connected with defence, as they apply in* relation to persons who are, or have been, members of those forces.

239. In the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made [illegible] who have [illegible] dia in the [illegible] served in [illegible]

CHAPTER II.

Civil Services.

General Provisions.

Tenure of office of persons employed in civil capacities in India.

240. (1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this subsection shall not apply—

(*a*) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(*b*) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post under the Crown in India holds office during His Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General, or, as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Recruitment and conditions of service.

241. (1) Except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall, after the commencement of Part III of this Act, be made—

(*a*) in the case of services of the Federation, and posts in connection with the affairs of the Federation by the Governor-General or such person as he may direct;

(*b*) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.

(2) Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed—

(*a*) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose;

(*b*) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose:

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less and nothing in this subsection shall be construed as i
service of any class of pers
rule-making authority to be a
case of that class.

(3) The said rules shall be so framed as to secure—

(*a*) that, in the case of a person who before the commencement of Part III of this Act was serving His Majesty in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect;

(*b*) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—

(i) punishes or formally censures him; or

(ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated; or

(iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation,

as he would have had immediately before the commencement of Part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect;

(*c*) that every other person serving His Majesty in a civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or a Governor.

(4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty in a civil capacity in India, and any rules made under this section shall have effect subject to the provisions of any such Act:

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding sub section

(5) No rules made under this section and no Act of any Legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable:

Provided that, where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act

Application of preceding section to railway, customs, postal and Telegraph services, and officials of courts.

242. (1) In its application to appointments to, and to persons serving in, the railway services of the Federation, the last preceding section shall have effect as if for any reference to the Governor-General in paragraph (*a*) of subsection (1) in paragraph (*a*) of subsection (2) and in subsection (5) there were substituted a reference to the Federal Railway Authority.

(2) In framing rules for the regulation of recruitment to superior railway posts, the Federal Railway Authority shall consult the Federal Public Service Commission, and in recruitment to such posts and in recruitment generally for railway purposes shall have due regard to the past association of the Anglo-Indian community with Railway Services in India, and particularly to the specific class, character, and numerical percentages of the posts hitherto held by members of that community and the remuneration attaching to such posts, and shall give effect to any instructions which may be issued by the Governor-General for the purpose of securing, so far as practicable to each community in India a fair representation in the railway services of the Federation, but, save as aforsaid, it shall not be obligatory on the Authority to consult

with, or otherwise avail themselves of the services of, the Federal Public Service Commission.

(3) In framing the rules for the regulation of recruitment to posts in the Customs, Postal and Telegraph services, the Governor-General or person authorised by him in that behalf shall have due regard to the past association of the Anglo Indian community with the said services, and particularly to the specific class, character and numerical percentages of the posts previously held in the said services by members of the said community and to the [illegible]

[illegible], and to, persons serving on, the staff [illegible] attached to a High Court, the said section shall have effect as if, in the case of the Federal Court, for any reference to the Governor-General in paragraph (a) of subsection (1), in paragraph (a) of subsection (2), and in subsection (5) there were substituted a reference to the Chief Justice of India and as if, in the case of a High Court, for any reference to the Governor in paragraph (b) of subsection (1), in paragraph (b) of subsection (2) and in subsection (5) there were substituted a reference to the chief justice of the court:

Provided that—

(a) in the case of the Federal Court, the Governor-General and in the case of a High Court, the Governor may in his discretion require that in such cases as he may in his discretion direct no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the Federal Public Service Commission, or the Provincial Public Service Commission, as the case may be;

(b) rules made under the said subsection (2) by a chief justice shall, so far as thay relate to salaries, allowances, leave or pensions, require the approval of the Governor-General or, as the case may be, the Governor.

Special provisions as to police.

243. Notwithstanding anything in [illegible] the condi[illegible] ranks of: [illegible] be such as may be determined by or under the Acts relating to those forces respectively.

Recruitment by Secretary of State and provisions as to certain posts.

Services recruited by Secretary of State.

244. (1) As from the commencement of Part III of this Act appointments to the civil services known as the Indian Civil Service, the Indian Medical Service (Civil), and [illegible] service shall thereafter be [illegible] otherwise determines, be [illegible]

(2) Until Parliament [illegible] make appointments to an[illegible] date he may deem it nece[illegible] the purpose of secu[illegible] cruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General which the Governor-General is by or [illegible]

[illegible] time to time prescribe, and the Secretary of State shall each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein.

(4) It shall be the duty of the Governor-General to keep the Secretary of State informed as to the operation of this section, and he may after the expiration of such period as he thinks fit make recommendations for the modification thereof.

In discharging his functions under this subsection, the Governor-General shall act in his discretion.

Special provision as to irrigation.

245. Until Parliament otherwise determines, the Secretary of State may for the purpose of securing efficiency in irrigation in any Province, appoint persons to any civil service of, or civil post under, the Crown in India concerned with irrigation.

Reserved posts.

246. (1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion), which, subject to the provisions of this subsection, are to be filled by persons appointed by the Secretary of State to a civil service of, or a civil post under, the Crown in India, and except under such conditions as may be prescribed in the rules no such posts shall, without the previous sanction of the Secretary of State—

(*a*) be kept vacant for more than three months ; or

(*b*) be filled otherwise than by the appointment of such a person as aforesaid ; or

(*d*) be held jointly with any other such post.

(2) Appointments and postings to the said posts (hereinafter in this Part of this Act referred to as "reserved posts") shall—

(*a*) in the case of posts in connection with the affairs of the Federation, be made by the Governor-General, exercising his individual judgment ,

(*b*) in the case of posts in connection with the affairs of a Province, be made by the Governor of the Province, exercising his individual judgment.

(3) All rules made under this section shall, so soon as may be after they are made, be laid before each House of Parliament and, if either House of Parliament within the next subsequent twenty-eight days on which that House has sat after any such rule has been laid before it resolves that the rule shall be annulled, the rule shall thenceforth be void but without prejudice to the validity of anything previously done thereunder or to the making of a new rule.

Conditions of service, pensions, &c. of persons recruited by Secretary of State.

247. (1) The conditions of service of all persons appointed to a civil service or a civil post by the Secretary of State shall—

(*a*) as respects pay, leave and pensions, and general rights in regard to medical attendance, be such as may be prescribed by rules to be made by the Secretary of State ;

(*b*) as respects other matters with respect to which express provision is not made by this chapter, be such as may be prescribed by rules to be made by the Secretary of State in so far as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made, as respects persons serving in connection with the affairs of the Federation, by the Governor General or some person or persons authorised by the Governor-General to make rules for the purpose and, as respects persons serving in connection with the affairs of a Province, by the Governor of the Province or some person or persons authorised by the Governor to make rules for the purpose :

Provided that no rule made under this subsection shall have effect so as to give to any person appointed to a civil service or civil post by the Secretary of State less favourable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post.

(2) Any [illegible] rvice or a civil post by the Secre[illegible] f not less than three months of any [illegible] person from office shall, if he is [illegible] deration, be [illegible] by the Governor General exercising his individual judgment and, if he is [illegible]

in connection with the affairs of a Province, be made by the Governor exercising his individual judgment.

(3) If any such person as aforesaid is suspended from office, his remuneration shall not during the period of his suspension be reduced except to such extent, if any, as may be directed by the Governor-General exercising his individual judgment or, as the case may be, by the Governor exercising his individual judgment.

(4) The salary and allowances of any such person as aforesaid shall, if he is serving in connection with the affairs of the Federation, be charged on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, be charged on the revenues of the Province :

Provided that, if any such person is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the Railway Fund.

(5) Pensions payable to or in respect of any such person as aforesaid, and government contributions in respect of any such person to any pension fund or provident fund, shall be charged on the revenues of the Federation.

(6) No award of a pension less than the maximum pension allowable under rules made under this section shall be made, except in each case with the consent of the Secretary of State.

(7) No rules made under this section shall be construed to limit or abridge the power of the Secretary of S

His Majesty in a civil capacity

to be just and equitable, and

other than the Secretary of State shall be construed to limit or abridge the power of the Governor-General or, as the case may be, the Governor of a Province to deal with the case of any such person in such manner as may appear to him to be just and equitable :

Provided that, where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule.

Rights in respect of complaints, appeals, &c.

248. (1) If any person appointed to a civil service or a civil post by the Secretary of State is aggrieved by an order affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain, if he is serving in connection with the affairs of the Federation, to the Governor-General and, if he is serving in connection with the affairs of a Province, to the Governor of the Province, and the Governor-General or Governor, as the case may be, shall examine into the complaint and cause such action to be taken thereon as appears to him exercising his individual judgment to be just and equitable.

(2) No order which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of pension, or decides adversely to him the subject matter of any memorial, shall be made

the affairs of the Federation, by the

judgment, or, if he is serving in

by the Governor of that Province,

exercising his individual judgment.

by the Secretary

(3) Any

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authority in

to his disadvantage any rule by which his conditions of service are regulated.

(4) Any sums ordered to be paid out of the revenues of the Federation or a Province to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues.

Compensation.

249. (1) If by reason of anything done under this Act the conditions of service of any person appointed to a civil service or a civil post by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of the Federation, or if the Secretary of State so directs, from the revenues of a Province, such compensation as the Secretary of State may consider just and equitable.

(2) Any sum payable under this section from the revenues of the Federation or the revenues of a Province shall be charged on the revenues of the Federation or, as the case may be, that Province.

(3) For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor-General, or, as the case may be, the Governor, from the revenues of the Federation or a Province by way of compensation to persons who are serving or have served His Majesty in India in cases to which those provisions do not apply.

Provisions as to persons appointed by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employment.

Application of four last preceding sections to persons appointed by Secretary of State in Council, and certain other persons.

250. (1) Subject to the provisions of this section, the provisions of the ... ny rules made ... to any person ... nmencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under the Crown in India as they apply in relation to ... ry of State. ... ections and rules ... as the Secretary ...

(a) not being a person appointed as aforesaid by the Secretary of State or the Secretary of State in Council, holds or has held a reserved post; or

(b) holds or has held any civil post under the Crown in India and is, or was when he was first appointed to such a post, an officer in His Majesty's forces.

(3) In relation to any person who was appointed before the commencement of Part III of this Act to a civil service of, or to a civil post under, the Crown in India, the provision contained in the sections aforesaid that no rule as to conditions of service shall have effect so as to give to any person less favourable terms as regards remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was ... coming into operation of the rule.

(4) In its application, by virtue of this section, to persons serving in the railway services of the Federation, ths second of the four last preceding sections (which relates to the conditions of service, pensions, &c., of persons recrutied by the Secretary of State) shall have effect as if for any reference to the Governor General in paragraph (b) of subsection (1) thereof and in subsection (2), (3) and (7) thereof there were substituted a reference to the Federal Railway Authority.

(5) Any liability of the Federation or of any Province to or in respect of any person appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under, Crown in India, being a liability to pay a pension granted to or in respect of

such person or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall, notwithstanding anything in this Act, be deemed, for the purposes of the provisions of Part VII of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of Part III of this Act.

Special provisions as to staffs of the High Commissioner for India and the Auditor of Indian Home Accounts.

Staff of High Commissioner and Auditor of Indian Home Accounts

251 The provisions of this Part of this Act shall apply in relation to appointments to, and to persons serving on, the staffs of the High Commissioner for India and the Auditor of Indian Home Accounts as if the service of members of those staffs were service rendered in India:

Provided that—

(*a*) appointments to the staff of the Auditor of Indian Home Accounts shall be made by him subject, as respects numbers, salaries and qualifications, to the approval of the Governor-General in his discretion; and

(*b*) in relation to that staff the functions of the Governor-General under this Part of this Act shall be exercised by him in his discretion.

Conditions of service of existing staff of High Commissioner and Auditor of Indian Home Accounts.

252. (1) All persons who immediately before the commencement of Part [illegible] of State in Council, shall continue to be, or shall become, members of the staff of th High Commissioner for India or, as the case may be, of the Auditor of Indian Home Accounts

(2) All such persons as aforesaid shall hold their offices or posts subject to like conditions of service as to remuneration, pensions or otherwise, as theretofore, or not less favourable conditions, and shall be entitled to reckon for purposes of pension any service which they would have been entitled to reckon if this Act had not been passed.

(3) The salaries, allowances and pensions payable to, or in respect of, such of the persons aforesaid as were members of the staff of the Auditor of the accounts of the Secretary of State in Council shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to, or in respect of, other such persons as aforesaid shall be so charged in so far as those salaries, allowances and pensions would, but for the passing of this Act, have been payable without being submitted to the vote of the Legislative Assembly of the Indian Legislature.

Special Provisions as to Judicial Officers.

Judges of the Federal Court and High Courts.

253. (1) The provisions of this chapter shall not apply to the judges of the Federal Court or of any High Court:

Provided that—

(*a*) for the purposes of this section a member of any of the civil services of the Crown in India who is acting temporarily as a judge of a High Court shall not be deemed to be a judge of that Court:

(*b*) nothing in this section shall be construed as preventing the Orders in Council relating to the salaries, leave and pensions of judges of the Federal Court, or of any High Court, from applying to such of those judges as were, before they were appointed judges, members of a civil service of the Crown in India, such of the rules relating to that service as may appear to His Majesty to be properly applicable in relation to them;

(c) nothing in this section shall . . :
judge of the Federal Court or of a High . .
sions of this chapter with respect to the . . . .
are not British subjects.

(2) Any pension which under the rules in force immediately before the commencement of Part III of this Act was payable to or in respect of any person who, having been a judge of a High Court within the meaning of this Act or of the the High Court at Rangoon, retired before the commencement of the said Part III shall, notwithstanding anyting in this Act, continue to be payable in accordance with those rules and shall be charged on the revenues of the Federation.

(3) Any liability of the Federation or of any Province to or in respect of any person who is, at the commencement of Part III of this Act, a judge of a High Court within the meaning of this Act, or to or in respect of any such person as is mentioned in subsection (2) of this section, being a liability to pay a pension granted to or in respect of any such person or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall notwithstanding anything in this Act, be deemed, for the purposes of the provisions of Part VII of this Act relating to legal proceedings, to be a liability arising under *a statute passed before the commencement of Part III of this Act.*

District Judges, &c.

254. (1) Appointments of persons to be, and the posting and promotion of district judges in any Province shall be made by the Governor of the Province, exercising his indi- . enda-

. . . . eligible to be appointed a district judge if he has been for not less than five years a barrister, a member of the Faculty of Advocates in Scotland, or a pleader and is recommended by the High Court for appointment.

(3) In this and the next succeeding section the expression "district judge" includes additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge, and assistant sessions judge.

Subordinate civil judicial service

255. (1) The Governor *of each Province shall, after consultation with the* Provincial Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate civil judicial service of a Province.

In this section, the expression "subordinate civil judicial service" means a service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge.

(2) The Provincial Public Service Commission for each Province, after holding such examinations, if any, as the Governor may think necessary, shall from time to time out of the candidates for appointment to the subordinate civil judicial service of the Province make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists in accordance with such regulations as may from time to time be made by him as *to the number of persons in the said service who are to belong to the different* communities in the Province.

(3) The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service of a Province and holding any post inferior to the post of district judge, shall be in the hands of the H . Court, but nothing in this section shall be construed as taking away from such person the right of appeal required to be given to him by the . .

provisions of this chapter, or as authorising the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder.

Subordinate criminal magistracy.

256. No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to, or the withdrawal of any magisterial powers from, any person save after consultation with the district magistrate of the district in which he is working, or with the Chief Presidency magistrate, as the case may be.

Special Provisions as to Political Department.

Officers of political department.

257. (1) Subject to the provisions of this section, the provisions of this Part of this Act shall not apply in relation to persons wholly or mainly employed in connection with the exercise of the functions of the Crown in its relations with Indian States.

(2) Notwithstanding anything in the preceding subsection, all persons so employed immediately before the commencement of Part III of this Act shall hold their offices or posts subject to the like conditions of service as to remuneration, pensions or otherwise as theretofore [illegible] in relation to those persons anything [illegible] Act, have been done by or in relation to t[illegible] be done by or in relation to the Secretary of State, acting with the concurrence of his advisers.

(3) Nothing in this section shall be construed as affecting the application to such persons of the rule of law that, except as otherwise provided by statute, every person employed under the Crown holds office during His Majesty's pleasure.

Provisions for the protection of certain existing officers.

Provision for protection of existing officers of certain Services.

258. (1) No civil post which immediately before the commencement of Part III of this Act, was a post in, or a post required to be held by some member of, a Central Service Class I, a Central Service Class II, a Railway Service Class I, a Railway Service Class II, or a Provincial Service, shall, if the abolition thereof would adversely affect any person who immediately before the said date was a member of any such service, be abolished, except—

(*a*) in the case of a post in connection with the affairs of the Federation, by the Governor General exercising his individual judgment;

(*b*) in the case of a post in connection with the affairs of a Province by the Governor of the Province exercising his individual judgment.

(2) No Rule or order affecting adversely the pay, allowances or pensions payable to, or in respect of, a person appointed before the coming into operation of this Part of this Act to a Central Service Class I, to a Railway Service Class I, or to a Provincial service, and no order upon a memorial submitted by any [illegible] who is serving or has served in connection with [illegible] ne Governor-General exercising his individual judgment;

(*b*) in the case of a person who is serving or has served in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(3) In relation to any person mentioned in this section who was appointed to a civil service of, or civil post under, the Crown in India by the Secretary of State or the Secretary of State in Council, or is an officer in His Majesty's

forces, the foregoing provisions of this section shall have effect as if for the reference to the Governor General or the Governer, as the case may be, there was substituted a reference to the Secretary of State.

Provisions as to certain persons serving in or before 1924.

259. (1) The salary and allowances of any person who was appointed before the first day of April, nineteen hundred and twenty-four, otherwise than by the Secretary of State in Council, to a service or a post which at any time between that date and the coming into operation of this Part of this Act was classified as a superior service or post shall be charged, if he is serving in connection with the affairs of the Federation on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, on the revenues of that Province:

Provided that, if any such person as aforesaid is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the railway fund.

(2) Any pension payable to or in respect of a person appointed as aforesaid, and any government contributions to any provident fund or pensions fund in respect of any such person, shall be charged on the revenues of the Federation:

(3) The provisions of the last preceding subsection shall also apply in relation to persons who retired before the first day of April nineteen hundred and twenty-four, and before they retired belonged to services or held posts which were as from the said date classified as superior services or posts, or which are declared by the Secretary of State to have been services or posts equivalent in character to services or posts so classified.

General provisions as to persons retiring before commencement of Part III

260. (1) Except as otherwise expressly provided in this chapter, any pension payable to or in respect of any person who, having been appointed to a civil service of, or a civil post under, the Crown in India, retired from the service of His Majesty before the commencement of Part III of this Act shall, if it would have been payable by the Local Government in any Province if this Act had not passed, be paid out of the revenues of the corresponding Province and in any other case shall be paid out of the revenues of the Federation

(2) Any pension payable to or in respect of any person who, having served in Burma or Aden, retired from an All-India Service, a Central Service Class I, a Central Service Class II, a Railway Service Class I, or a Railway Service Class II, before the commencement of Part III of this Act shall be paid out of the revenues of the Federation, but save as aforesaid nothing in this section applies to any person who retired after service in Burma or Aden

Miscellaneous.

Secretary of State to act with concurrence of his advisers

261. The powers conferred by this and the subsequent chapters of this Part of this Act on the Secretary of State shall not be exercisable by him except with the concurrence of his advisers

Eligibility for office of persons who are not British subjects.

262. (1) The Ruler or a subject of a Federated State shall be eligible to hold any civil office under the Crown in India in connection with the affairs of the Federation, and the Governor General may declare that the Ruler or any subject of a specified Indian State which is not a Federated State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any such office, being an office specified in the declaration.

(2) The Governor of a Province may declare that the Ruler or any subject of a specified Indian State, or any native of a specified tribal area or terri adjacent to India, shall be eligible to hold any civil office in connection the affairs of the Province, being an office specified in the declaration.

(3) The Secretary of State may declare that any named subject of an Indian State, or any named native of a tribal area or territory adjacent to India, shall be eligible for appointment by him to any civil service under the Crown in India to which he makes appointments, and any person who, having been so declared eligible, is appointed to such a service, shall be eligible to hold any civil office under the Crown in India :

(4) Subject as aforesaid and to any other express provisions of this Act no person who is not a British subject shall be eligible to hold any office under the Crown in India.

Provided that the Governor-General or, in relation to a Province, the Governor may authorise the temporary employment for any purpose of a person who is not a British subject.

(5) In the discharge of his functions under this section the Governor General or the Governor of a Province shall exercise his individual judgment.

Joint services and posts.

263. If an agreement is made between the Federation and one or more Provinces, or between two or more Provinces, for the maintenance or creation of a service common to the Federation and one and more Provinces, or common to two or more Provinces, or for the maintenance or creation of a post the functions whereof are not restricted to the affairs of the Federation or one Province, the agreement may make provision that the Governor-General or any Governor or any Public Service Commission, shall do in relation to that service or post anything which would under the provisions of this chapter be done by the Governor or the Provincial Public Service Commission if the service or post was a service or post in connection with the affairs of one Province only.

CHAPTER III.

Public Service Commissions.

Public Service Commissions.

264. (1) Subject to the provisions of this section, there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province.

(2) Two or more Provinces may agree that—

(*a*) there shall be one Public Service Commission for that group of Provinces ; or

(*b*) that the Public Service Commission for one of the Provinces shall serve the needs of all the Provinces,

and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of Provinces, specify by what Governor or Governors the functions which are under this Part of this Act to be discharged by the [illegible]

[illegible]

be construed as references to the Commission serving the needs of the Federation or, as the case may be, the Province as respects the particular matter in question.

Composition and staff of Commissions.

265. (1) The chairman and other members of a Public Service Commission shall be appointed, in the case of the Federal Commission, by the Governor-General in his discretion, and in the case of a Provincial Commission, by the Governor of the Province in his discretion :

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Crown in India.

(2) In the case of the Federal Commission, the Governor-General in his discretion and, in the case of a Provincial Commission, the Governor of the Province in his discretion, may by regulations—

(*a*) determine the number of members of the commission, their tenure of office and their conditions of service; and

(*b*) make provision with respect to the numbers of staff of the commission and their conditions of service.

(3) On ceasing to hold office—

(*a*) the chairman of the Federal Commission shall be ineligible for further employment under the Crown in India;

(*b*) the chairman of a Provincial Commission shall be eligible for appointment as the chairman or a member of the Federal Commission, or as the chairman of another Provincial Commission, but not for any other employment under the Crown in India;

(*c*) no other member of the Federal or of any Provincial Commission shall be eligible for any other appointment under the Crown in India without the approval, in the case of an appointment in connection with the affairs of a Province, of the Governor of the Province in his discretion and, in the case of any other appointment, of the Governor-General in his discretion.

Functions of Public Service Commissions.

266. (1) It shall be the duty of the Federal and the Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation and the services of the Province respectively.

(2) It shall also be the duty of the Federal Public Service Commission, if requested by any two or more Provinces so to do, to assist those Provinces in framing and operating schemes of joint recruitment for their forest services, and any other services for which candidates possessing special qualifications are required.

(3) The Secretary of State as respects services and posts to which appointments are made by him, the Governor-General in his discretion as respects other services and posts in connection with the affairs of the Federation, and the Governor in his discretion as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters on which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding subsection, the Federal Commission or, as the case may be, the Provincial Commission shall be consulted—

(*a*) on all matters relating to methods of recruitment to civil services and for civil posts;

(*b*) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(*c*) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India including memorials or petitions relating to such matters;

(*d*) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the Province;

(*e*) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and question as to the amount of any such award,

(3) The Secretary of State may declare that any named subject of an Indian State, or any named native of a tribal area or territory adjacent to India, shall be eligible for appointment by him to any civil service under the Crown in India to which he makes appointments, and any person who, having been so declared eligible, is appointed to such a service, shall be eligible to hold any civil office under the Crown in India :

(4) Subject as aforesaid and to any other express provisions of this Act no person who is not a British subject shall be eligible to hold any office under the Crown in India.

Provided that the Governor-General or, in relation to a Province, the Governor may authorise the temporary employment for any purpose of a person who is not a British subject.

(5) In the discharge of his functions under this section the Governor General or the Governor of a Province shall exercise his individual judgment.

Joint services and posts.

263. If an agreement is made between the Federation and one or more Provinces, or between two or more Provinces, for the maintenance or creation of a service common to the Federation and one and more Provinces, or common to two or more Provinces, or for the maintenance or creation of a post the functions whereof are not restricted to the affairs of the Federation or one Province, the agreement may make provision that the Governor-General or any Governor or any Public Service Commission, shall do in relation to that service or post anything which would under the provisions of this chapter be done by the Governor or the Provincial Public Service Commission if the service or post was a service or post in connection with the affairs of one Province only.

CHAPTER III.

PUBLIC SERVICE COMMISSIONS.

Public Service Commissions.

264. (1) Subject to the provisions of this section, there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province.

(2) Two or more Provinces may agree that—

(*a*) there shall be one Public Service Commission for that group of Provinces ; or

(*b*) that the Public Service Commission for one of the Provinces shall serve the needs of all the Provinces,

and any such agreement m[illegible] visions as may appear ne[illegible] of the agreement and shall, [illegible] Commission for a group [illegible] the functions which are under this Part of this Act to be discharged by the Governor of a Province are to be discharged.

(3) The Public Service Commission for the Federation if requested so to [illegible] vince may, with the approval of the Governor [illegible] of the needs of the Province.

[illegible] this Act to the Federal Public Service Commission or a Provincial Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Federation or, as the case may be, the Province as respects the particular matter in question.

Composition and staff of Commissions.

265. (1) The chairman and other members of a Public Service Commission shall be appointed, in the case of the Federal Commission, by the Governor-General in his discretion, and in the case of a Provincial Commission, by the Governor of the Province in his discretion :

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Crown in India.

(2) In the case of the Federal Commission, the Governor-General in his discretion and, in the case of a Provincial Commission, the Governor of the Province in his discretion, may by regulations –

(*a*) determine the number of members of the commission, their tenure of office and their conditions of service; and

(*b*) make provision with respect to the numbers of staff of the commission and their conditions of service.

(3) On ceasing to hold office—

(*a*) the chairman of the Federal Commission shall be ineligible for further employment under the Crown in India;

(*b*) the chairman of a Provincial Commission shall be eligible for appointment as the chairman or a member of the Federal Commission, or as the chairman of another Provincial Commission, but not for any other employment under the Crown in India;

(*c*) no other member of the Federal or of any Provincial Commission shall be eligible for any other appointment under the Crown in India without the approval, in the case of an appointment in connection with the affairs of a Province, of the Governor of the Province in his discretion and, in the case of any other appointment, of the Governor-General in his discretion.

Functions of Public Service Commissions

266. (1) It shall be the duty of the Federal and the Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation and the services of the Province respectively.

(2) It shall also be the duty of the Federal Public Service Commission, if requested by any two or more Provinces so to do, to assist those Provinces in framing and operating schemes of joint recruitment for their forest services, and any other services for which candidates possessing special qualifications are required.

(3) The Secretary of State as respects services and posts to which appointments are made by him, the Governor-General in his discretion as respects other services and posts in connection with the affairs of the Federation, and the Governor in his discretion as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters on which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding subsection, the Federal Commission or, as the case may be, the Provincial Commission shall be consulted—

(*a*) on all matters relating to methods of recruitment to civil services and for civil posts;

(*b*) on the principles, to be followed in making appointments to, civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(*c*) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India including memorials or petitions relating to such matters;

(*d*) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the Province;

(*e*) on any claim for the award of a pension in respect of i [illegible] sustained by a person while serving His Majesty in a civil capacity in [illegible] d question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the Governor-General in his discretion, or, as the case may be, the Governor in his discretion, may refer to them.

(4) Nothing in this section shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Federation or a Province or, in the case of the subordinate ranks of the various police forces in India, as respects any of the matters mentioned in paragraphs (*a*), (*b*) and (*c*) of subsection (3) of this section.

Power to extend functions of Public Service Commissions.

267. Subject to the provisions of this section, an Act of the Federal Legislature or the Provincial Legislature may provide for the exercise of additional functions by the Federal Public Service Commission or, as the case may be, by the Provincial Public Service Commission :

Provided that—

(*a*) no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, or, as the case may be, of the Governor in his discretion ; and

(*b*) it shall be a term of every such Act that the functions conferred by it shall not be exercisable—

(i) in relation to any person appointed to a service or a post by the Secretary of State or the Secretary of State in Council any officer in His Majesty's Forces, or any holder of a reserved post except with the consent of the Secretary of State ; or

(ii) Where the Act is a provincial Act, in relation to any person who is not a member of one of the services of the Province, except with the consent of the Governor-General.

Expenses of Public Service Commissions.

268. The expenses of the Federal or a Provincial Public Service Commission including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of the Fedtraion or, as the case may be, the Province :

Provided that nothing in this section shall charge on the revenues of a Province any pension which is by virtue of the provisions of chapter II of this Part of this Act charged on the revenues of the Federation.

CHAPTER IV.

Chaplains.

Provisions as to chaplains.

269. (1) There may, as heretofore, be an establishment of chaplains to minister in India to be appointed by the Secretary of State and the provisions of chapter II of this Part of this Act shall, with any necessary modifications, apply in relation to [illegible] plains by the Secretary of [illegible] apply in relation to the [illegible] by the Secretary of State and to persons appointed to a civil service under the Crown in India by the Secretary of State or by the Secretary of State in Council, and for the purposes of the provisions of chapter II relating to persons who retired before the commencement of Part III of this Act the said establishment shall be deemed to be an all-India service.

(2) So long as an establishment of chaplains is maintained in the Province of Bengal, two members of that establishment in the Province must always be ministers of the Church of Scotland and shall be entitled to have out of the revenues of the Federation such salary as is from time to time allotted to the military chaplains in that Province.

This subsection applies to the Province of Madras and to the Province of Bombay as it applies to the Province of Bengal.

(3) The ministers of the Church of Scotland so appointed chaplains must be ordained and inducted by the Presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the Presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

CHAPTER V.

General

Indemnity for past acts.

270. (1) No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion.

(2) Any civil or criminal proceedings instituted, whether before or after the coming into operation of this Part of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date shall be dismissed unless the court is satisfied that the acts complained of were not done in good faith, and, where any such proceedings are dismissed the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged, in the case of persons employed in connection with the functions of the Governor-General in Council or the affairs of Burma, on the revenues of the Federation, and in the case of persons employed in connection with the affairs of a Province, on the revenues of that Province.

(3) For the purposes of this section—

the expression "the relevant date" means, in relation to acts done by persons employed about the affairs of a Province or about the affairs of Burma, the commencement of Part III of this Act and, in relation to acts done by persons employed about the affairs of the Federation, the date of the establishment of the Federation;

references to persons employed in connection with the functions of the Governor-General in Council include references to persons employed in connection with the affairs of any Chief Commissioner's Province;

a person shall be deemed to have been employed about the affairs of a Province if he was employed about the affairs of the Province as constituted at the date when the act complained of occurred or is alleged to have occurred.

Protection of public servants against prosecution and suits.

271. (1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by section one hundred and ninety seven of the Indian Code of Criminal Procedure or by sections eighty to eighty-two of the Indian Code of Civil Procedure, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(2) The powers conferred upon a Local Government by the said section one hundred and ninety-seven with respect to the sanctioning of prosecutions and

the determination of the court before which, the person by whom and the manner in which, a public servant is to be tried, shall be exercisable only—

(*a*) in the case of a person employed in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment; and

(*b*) in the case of a person employed in connection with the affairs of a Province, by the Governor of that Province exercising his individual judgment:

Provided that nothing in this subsection shall be construed as restricting the power of the Federal or a Provincial Legislature to amend the said section by a Bill or amendment introduced or moved with such previous sanction as is mentioned in subsection (1) of this section.

(3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor-General exercising his individual judgment so directs in th [illegible] with the affairs of the Federation, [illegible] judgment so directs in the case of [illegible] affairs of a Province, be defrayed out of and charged on the revenues of the Federation or of the Province, as the case may be.

Provisions as to payment of certain pensions and exemption of those pensions from taxation in India.

272. Any pension payable to or in respect of a person who—

(*a*) before the commencement of Part III of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor-General in Council; or

(*b*) after the commencement of Part III of this Act—

(i) serves in India as an officer of His Majesty's forces, or

(ii) is appointed to a civil service of, or to an office or post under, the Crown in India by His Majesty or the Secretary of State; or

(iii) holds a reserved post,

shall, if the person to whom the pension is payable is residing permanently outside India, be paid on behalf of the Federation or the Province, as the case may be, by, or in accordance with arrangements made with, the Secretary of State, and be exempt from all taxation imposed by or under any existing Indian law, or any law of the Federal or of a Provincial Legislature.

Provisions as to family pension funds.

273. (1) His Majesty may by Order in Council provide for the vesting in Commissioners to be appointed under the Order of—

(*a*) the Indian Military Widows and Orphans Fund;

(*b*) [illegible]

(*c*) [illegible] nd to be contributed under [illegible] lations for the purpose of paying pensions payable under those regulations;

(*d*) a [illegible] contributed and to be contributed under [illegible] nsion Rules for the purpose of paying pensi[illegible]

for the investment of the said funds by the Commissioners, in such manner as subject to the provisions of the Order, they think fit, for the administration of the said funds in other respects by the Secretary of State, for the remuneration of the Commissioners out of the said funds, and for any other matters incidental to or consequential on the purposes of the Order; and if any such Order is made, then, as from such date as may be specified in the Order, any pensions payable under the said regulations and rules, shall, subject to the provisions of

subsection (3) of this section be payable out of the appropriate fund in the hands of the Commissioners, and not otherwise.

Before recommending His Majesty to make any Order in Council under this subsection, the Secretary of State shall consider any representations made to him by any of the existing subscribers and beneficiaries or by any persons appearing to him to represent any body of those subscribers or beneficiaries.

(2) Any such Order as aforesaid shall provide that the balance in the hands of the Governor-General on the thirty-first day of March next following the passing of this Act in respect of the Indian Military Widows and Orphans Fund and the *Superior Services (India) Family Pension Fund, and in respect* of the moneys theretofore contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules shall, subject to the provisions of subsection (3) of this section be transferred to the Commissioners before the expiration of three years from the said date either all at one time or by instalments, together with such interest as may be prescribed by or under the Order:

Provided that His Majesty in Council may, if it appears to him necessary so to do, extend the said period of three years.

(3) Any such Order as aforesaid shall provide for the making of objections by and on behalf of existing subscribers and beneficiaries to the vesting of any such fund as aforesaid in the Commissioners and, if any objection is so made in the manner and within the time limited by the Order—

(*a*) so much of any money in the hands of the Governor-General as represents the interest of the objector shall not be transferred to the Commissioners, but shall be dealt with as part of the revenues of the Federation; and

(*b*) in lieu of any pensions which might be payable out of the said funds to or in respect of the objectors there shall be payable out of the revenues of the Federation to and in respect of the said persons such pensions on such conditions as may be specified in rules to be made by the Secretary of State.

(4) Any such Order as aforesaid may, notwithstanding anything in this Part of this Act or in the regulations or rules relating to the fund in question, provide for the making of such alterations in any pensions payable out of the fund to which the Order relates as may be reasonably necessary in consequence of the transfer effected under the Order.

(5) Any interest or dividends received by the Commissioners on sums forming part of any fund vested in them under this section shall be exempt from income-tax in the United Kingdom, and estate duty shall not be payable in Great Britain, nor, if the Parliament of Northern Ireland so provides, in Northern Ireland, in respect of any pension payable under the regulations or rules relating to any such fund.

(6) In this section—

references to the Indian Military Service Family Pension Regulations or the Indian Civil Service Family Pension Rules shall be construed as including references to any regulations or rules which may be substituted therefor;

the expression "existing subscribers and beneficiaries" means in relation to the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund persons who have subscribed to, or are or have been in receipt of pensions from, those funds, and, in relation to the funds to be formed out of the moneys contributed under the Indian Military service Family Pension Regulations and the Indian Civil Service Family Pension Rules, persons who have contributed under, or are or have been in receipt of pensions payable under, the regulations or rules, not being persons who have surrendered or forfeited their interest in the Fund or, as the case may be, their interest under the regulations or rules;

references to pensions payable under the said regulations or the said rules do not include references to any pension or portion of a pension payable

otherwise than out of the moneys contributed and to be contributed under those regulations or rules ;

references to moneys so contributed, or to be so contributed, include references to interest upon such moneys.

(7) Notwithstanding anything in this Act, and in particular notwithstanding the separation of Burma and Aden from India, the provisions of this section shall apply in relation to persons who, before the commencement of Part III of this Act, were serving His Majesty in India, Burma or Aden, and after the commencement thereof continue to serve His Majesty in Burma or Aden, as they apply in ... served His Majesty in Ind ... , to any such fund may appl[illegible]

If any Order in Council is made under this section, and if provision in that behalf is made by the Acts or rules relating to conditions of service of persons serving His Majesty in Burma, the said regulations and rules may also extend to persons appointed to the service of the Crown in Burma after the commencement of Part III of this Act.

Saving for certain Funds Acts.

274. Notwithstanding anything in this Act, the India Military Funds Act, 1866,* the East India Annuity Funds Act, 1874,† and the Bombay Civil Fund Act, 1882,‡ shall continue to have effect but subject to the following adaptations, that is to say, that anything to be done under the said Acts by or to the Secretary of State in Council shall, after the commencement of Part III of this Act, be done by or to the Secretary of State, and for any reference in the said Acts to the revenues of India there shall be substituted a reference to the revenues of the Federation.

Persons not to be disqualified by sex for holding certain offices.

275. A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in India other than such a service or post as may be specified by any general or special order made—

(*a*) by the Governor-General in the case of services and posts in connection with the affairs of the Federation ;

(*b*) by the Governor of a Province in the case of services and posts in connection with the affairs of the Province ;

(*c*) by the Secretary of State in relation to appointments made by him :

Provided that any such agreement with respect to joint services and posts as is mentioned in chapter II of this Part of this Act may provide for the powers conferred by this section on the Governor-General and the Governor of a Province being exercised, with respect to the services or posts to which the agreement applies, by the Governor-General or a specified Governor.

Transitional provisions.

276. Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the civil services of, or civil posts under, the Crown in India which were in force immediately before the commencement of Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act

Interpretation, &c.

277. (1) In this Part of this Act—

the expression "all-India Service," "Central Service Class I," "Central Service Class II," "Railway Service Class I," "Railway Service Class II" and "Provincial Service" mean respectively the services which were immediately before the

* 29 and 30 Vict. c. 18. † 37 and 38 Vict. c. 12.

‡ 45 and 46 Vict. c. 45.

commencement of Part III of this Act, so described respectively in the classification rules then in force under section ninety-six B of the Government of India Act ; and

references to dismissal from His Majesty's service include references to removal from His Majesty's service.

(2) References in this Part of this Act to persons appointed to a civil service of, or a civil post under, the Crown in India—

(*a*) include references to persons who, after service in India, Burma, or Aden, retired from the service of His Majesty before the commencement of Part III of this Act ;

(*b*) do not include references to persons so appointed who, after the commencement of Part III of this Act, become members of a civil service of, or hold civil posts under, the Crown in Burma or Aden.

(3) The inclusion in this Part of this Act of provisions expressly requiring the Governor-General or a Governor to exercise his individual judgment with respect to any matter shall not be construed as derogating from the special responsibility of the Governor-General and the Governors for the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests.

PART XI.

THE SECRETARY OF STATE, HIS ADVISERS AND HIS DEPARTMENT.

Advisers to Secretary of State.

278. (1) There shall be a body of persons appointed by the Secretary of State, not being less than three nor more than six in number, as the Secretary of State may from time to time determine, whose duty it shall be to advise the Secretary of State on any matter relating to India on which he may desire their advice

(2) One half at least of the persons for the time being holding office under this section as advisers of the Secretary of State shall be persons who have held office for at least ten years under the Crown in India and have not last ceased to perform in India official duties under the Crown more than two years before the date of their respective appointments as advisers under this section.

(3) Any person appointed as an adviser to the Secretary of State shall hold office for a term of five years and shall not be eligible for reappointment :

Provided that—

writing under his hand resign his offi-

he is satisfied that any person so ap-
l or body become unfit to continue to hold his office, by order remove him from his office.

(4) A person for the time being holding office as adviser to the Secretary of State shall not be capable of sitting or voting in either House of Parliament.

(5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of thirteen hundred and fifty pounds a year, and also to any of them who at the date of his appointment was domiciled in India a subsistence allowance of six hundred pounds a year.

(6) Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provision of this Act which requires that the Secretary of State sh- obtain the concurrence of his advisers shall be deemed to be satisfied if

meeting of his advisers he obtains the concurrence of at least one half of those present at the meeting, or if sudh notice and opportunity for objection as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion of the matter.

In this subsection "prescribed" means prescribed by rules of business made by the Secretary of State after obtaining at a meeting of his advisers the concurrence of at least one-half of those present at the meeting.

(8) The Council of India as existing immediately befor the commencement of Part III of this Act shall be dissolved.

(9) Notwithstanding anything in the foregoing provisions of this section, a person who immediately before the commencement of Part III of this Act was a member of the Council of India may be appointed under this section as an adviser to the Secretary of State to hold office as such for such period less than five years as the Secretary of State may think fit.

Existing accounts of Secretary of State in Council with Bank of England

279. (1) All stock or money standing to the credit of the Secretary of State in Council in the books of the Bank of England at the commencement of Part III of this Act shall, as from that date, be transferred to the credit of the Secretary of State, and any order or instrument with respect to that stock or money executed by the Secretary of State or by such person as may be authorised in writing by the Secretary of State for the purpose, either generally or specially, shall be a sufficient authority and discharge to the Bank in respect of anything done by the Bank in accordance therewith

(2) Any directions, authority or power of attorney given or executed by or on behalf of the Secretary of State in Council and in force at the commencement of Part III of this Act shall continue in force until countermanded or revoked by the Secretary of State.

Organisation and expenses of India Office.

280. (1) As from the commencement of Part III of this Act the salary of the Secretary of State and the expenses of his department, including the salaries and remuneration of the staff thereof, shall be paid out of moneys provided by Parliament

(2) Subject to the provisions of the next succeeding section with respect to the transfer of certain existing officers and servants, the Secretary of State may appoint such officers and servants as he, subject to the consent of the Treasury as to numbers, may think fit and there shall be paid to persons so appointed such salaries or remuneration as the Treasury may from time to time determine.

(3) There shall be charged on and paid out of the revenues of the Federation into the Exchequer such periodical or other sums as may from time to time be agreed between the Governor General and the Treasury in respect of so much of the expenses of the department of the Secretary of State as is attributable to the performance on behalf of the Federation of such functions as it may be agreed between the Secretary of State and the Governor-General that that department should so perform

Transfer of existing personnel.

281. (1) All persons who immediately beforet he commencement of Part III of this Act were officers or servants on the permanent establishment of the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and shall be deemed to be permanent Civil Servants of the State.

(2) Subject as hereinafter provided, the provisions of the Superannuation Acts, 1834 to 1935, and of any orders, rules and regulations made thereunder shall apply in relation to a person so transferred as aforesaid as they apply in relation to a person entering the Civil Service with a certificate from the Civil

Service Commissioners, and for the purposes of those Acts, orders, rules and regulations his service shall be reckoned as if service on the permanent establishment of, and employment by, the Secretary of State in Council had at all times been service or employment in a public department the expenses whereof were *wholly defrayed out of moneys provided by Parliament* :

Provided that neither the Superannuation Act, 1909,* nor section four of the Superannuation Act, 1935,† shall apply in relation to any person so transferred unless that Act, or, as the case may be, that section (as applicable to persons on the permanent establishment of the Secretary of State in Council) would have applied in relation to him if this Act had not been passed.

(3) His Majesty may by Order in Council direct that in their application to any person so transferred the said Acts, orders, rules and regulations shall have effect subject to any such modifications as may appear to His Majesty to be necessary for securing that the case of any such person shall not be dealt with in any manner less favourable to him than it would have been dealt with if this Act had not been passed and he had continued to serve on the establishment of the Secretary of State in Council.

(4) All persons who, not being on the permanent establishment of the Secretary of State in Council, were immediately before the commencement of Part III of this Act officers or servants employed in the United Kingdom by the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and, for the purposes of the Superannuation Acts, 1834 to 1935, and the orders, rules and regulations made thereunder, employment by the Secretary of State in Council shall be treated as if it had been employment by the Secretary of State.

(5) If the conditions of service of any person to whom the last preceding subsection applies included a condition as to eligibility for a retiring allowance in consideration of meritorious service, the Treasury may, if they think fit, grant to him such an allowance on his retirement

(6) Notwithstanding anything in the Pensions Commutation Acts, 1877 to 1882, it shall be lawful for the Treasury to commute for a capital sum so much [illegible] or retiring allowance as is payable out of [illegible] person so transferred as aforesaid and for [illegible] so much of any such allowance as is payable to such a person out of the revenues of the Federation

Any such commutation shall be made upon such conditions as His Majesty in Council may direct, not being more favourable than the conditions which would have applied to the person in question if he had retired from the establishment of the Secretary of State in Council.

Contributions from revenues of Federation.

282. (1) So much of any superannuation allowances, compensation allowances, retiring allowances, additional allowances or gratuities which may become payable to or in respect of officers and servants transferred by the last preceding section to the department of the Secretary of State as His Majesty in Council may determine to represent the proportion of such allowances or gratuities attributable to service before the date of transfer shall be paid out of the revenues of the Federation :

Provided that account shall not be taken of any service before the date of transfer in respect of which such an allowance or gratuity payable out of moneys provided by Parliament might, if this Act had not been passed, have been awarded under the Superannuation Acts, 1834 to 1935.

(2) If any officer or servant so transferred to the department of the Secretary of State, or any person who, having been previously on the establishment of the Secretary of State in Council, was immediately before the con-

* 9 Edw. 7. c 10. † 25 and 26 Geo. 5. c. 23.

ment of Part III of this Act a member of the staff of the High Commissioner for India, or any person who immediately before the commencement of Part III of this Act was the Auditor of the Accounts of the Secretary of State in Council or a member of his staff, loses his employment by reason of the abolition of his office or post, or by reason of any reorganisation of the department or of his office, where such abolition or reorganisation results in the opinion of the Secretary of State from the operation of this Act, the Secretary of State shall award to that officer or servant out of the revenues of the Federation such compensation as he may think just and equitable in augmentation of any allowance or gratuity for which that officer or servant may be otherwise eligible.

(3) Any payments directed by this section to be made out of the revenues of the Federation shall be charged upon those revenues.

Liability for pensions in respect of service before commencement of Part III.

283. (1) The liability for payment of any superannuation allowances, compensation allowances, retiring allowances, additional allowances and gratuities which immediately before the commencement of Part III of this Act were payable to or in respect of persons in respect of service on the establishment of the Secretary of State in Council, or in respect of service as Auditor of the Accounts of the Secretary of State in Council, or in respect of service as a member of that Auditor's staff, or partly in respect of service on the establishment of the Secretary of State in Council or as a member of that Auditor's staff and partly in respect of service as a member of the staff of the High Commissioner for India shall be a liability of the Government of the Federation, and those allowances and gratuities shall be charged .

(2) The provisions of subse [illegible]
much of any superannuation [illegible]
allowances, additional allowances, and gratuities awarded after the com-ment of Part III of this Act to persons not transferred by the last but one preceding section as is attributable to such service before the commencement of Part III of this Act as is mentioned in the said subsection (1).

Provision as to certain India Office provident funds.

284. Any sums which, if this Act had not been passed, would have been payable, whether as of right or not, by the Secretary of State in Council out of the revenues of India to or in respect of a person who was a subcriber to the Regular Widows' Fund, the Elders Widows' Fund, or the India Office Provident Fund, shall be paid out of the revenues of the Federation and charged on those revenues.

PART XII.

MISCELLANEOUS AND GENERAL.

The Crown and the Indian States.

Saving for rights and obligations of the Crown in its relations with Indian States.

285. Subject in the case of a Federated State to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State.

Use of His Majesty's forces in connection with discharge of the functions of the Crown in relations with Indian States.

286. (1) If His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States [illegible]
executive authority of the Federation to cau[illegible] the necessary forces to be employed accordingly, but the net additional expense, if any, incurred in connection with those forces

by reason of that employment shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown.

(2) In discharging his functions under this section the Governor-General shall act in his discretion.

Arrangements for Governors and Provincial staff to assist in discharging functions of Political Department.

287. Arrangements may be made between His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States and the Governor (

tion with the exercise of the said functions of the Crown.

Aden.

288. (1) On such date a

Aden.

of Aden (in this section referred to as "Aden") shall cease to be a part of British India.

(2) At any time after the passing of this Act it shall be lawful for His Majesty in Council to make such provision as he deems proper for the government of Aden after the appointed day, and any such Order in Council may delegate to any person or persons within Aden, power to make laws , without prejudice ich delegation, from

e of the preceding words of that subsection, contain provisions with respect to—

(*a*) the continuing validity of all Acts, orders, ordinances and regulations in force in Aden immediately before the appointed day;

(*b*) the continuing validity of lawful acts done by any authority in Aden before the appointed day;

(*c*) the validity and appointed day in any Court of

(*d*) the enforcement by which, if this Act had not been passed, might have been enforced by or against the Secretary of State in Council in connection with the administration of Aden.

(4) If any such Order is made, it shall confer appellate jurisdiction from courts in Aden upon such court in India as may be specified in the Order, and it shall be the duty of any court in India upon which jurisdiction is so conferred to exercise that jurisdiction, and such contribution, if any, as His Majesty in Council may determine shall be paid out of the revenues of Aden towards the expenses of that court

The Order shall also make provision specifying the cases in which an appeal from that court in India may be brought to His Majesty in Council.

(5) Any property which immediately before the separation of Aden from India was vested in His Majesty for the purposes of the Government of India and either was then situate in Aden, or, by virtue of any delegation from the Secretary of State in Council or otherwise was then in the possession, or under the control of, or held on account of, the Local Government of Aden, shall, as from the said separation, vest in His Majesty for the purposes of the Government of Aden, and any contract made or liability incurred by or on behalf of the Secretary of State in Council before the said separation solely for a purpose which will after the separation be a purpose of

the Government of Aden shall, as from the separation, have effect as if it had been made or incurred by or on behalf of the Government of Aden.

New Provinces and alterations of boundaries of Provinces.

Creation of new provinces of Sind and Orissa.

289. (1) As from such date as His Majesty may by Order in Council appoint—

(*a*) Sind shall be separated from the Presidency of Bombay and shall form a Governor's Province to be known as the Province of Sind;

(*b*) Orissa and such other areas in the Province of Bihar and Orissa as may be specified in the Order of His Majesty shall be separated from that Province, and such areas as may be specified in the said Order shall be separated from the Presidency of Madras and the Central Provinces respectively, and Orissa and the other areas so separated shall together form a Governor's Province to be known as the Province of Orissa; and

(*c*) the Province formerly known as Bihar and Orissa shall be known as the Province of Bihar.

(2) An Order in Council made under this section shall define the boundaries of the Provinces of Sind and Orissa and may contain—

(*a*) such provisions for their government and administration during the period before Part III of this Act comes into operation;

(*b*) such provisions for varying during the said period the composition of the Local Legislature of any Presidency or Province the boundaries of which are altered under this section;

(*c*) such provisions with respect to the laws which, subject to amendment or repeal by the Provincial or, as the case may be, the Federal Legislature, are to be in force in, or in any part of Sind or Orissa respectively;

(*d*) in the case of Orissa, such provisions with respect to the jurisdiction therein of any court theretofore exercising the jurisdiction of a High Court, either generally or for any particular purpose, in any area to be included in the Province;

(*e*) such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities; and

(*f*) such supplemental, incidental and consequential provisions, as His Majesty may deem necessary or proper.

(3) Subject to the provisions of any such Order as aforesaid, the Governor-General in Council may, until the date on which Part III of this Act comes into operation, exercise in relation to the Provinces of Sind and Orissa and any Presidency or Province the boundaries of which are altered under this section any powers which he might have exercised if the said new Provinces had been constituted, or those boundaries had been altered, under the provisions in that behalf contained in the Government of India Act

(4) In this Act the expression "the Legislative Council of the Province" when used in relation to a date before the commencement of Part III of this Act shall in the case of Sind and Orissa be deemed to refer to the Legislative Councils of Bombay and of Bihar or Bihar and Orissa respectively.

Creation of new Provinces and alterations of boundaries of Provinces

290. (1) Subject to the provisions of this section, His Majesty may by order in Council—

(*a*) create a new Province;
(*b*) increase the area of any Province;
(*c*) diminish the area of any Province,
(*d*) alter the boundaries of any Province:

Provided that, before the draft of any such Order is laid before Parliament the Secretary of State shall take such steps as His Majesty may direct for ascertaining the views of the Federal Government and the Chambers of the

Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature of any Province which will be affected by the Order, both with respect to the proposal to make the Order and with respect to the provisions to be inserted therein.

(2) An Order made under this section may contain such provisions for varying the representation in the Federal Legislature of any Governor's province the boundaries of which are altered by the Order and for varying the composition of the Legislature of any such Province, such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and such other supplemental, incidental and consequential provisions as His Majesty may deem necessary or proper :

Provided that, no such Order shall vary the total membership of either Chamber of the Federal Legislature.

(3) In this section the expression "Province" means either a Governor's Province or a Chief Commissioner's Province

Franchise.

Power of His Majesty to make provison with respect to franchises and elections.

291. In so far as provision with respect to the matters hereinafter mentioned is not made by this Act, His Majesty in Council may from time to time make provision with respect to those matters or any of them, that is to say—

(*a*) the delimitation of territorial constituencies for the purpose of elections under this Act ;

(*b*) the qualifications entitling persons to vote in territorial or other constituencies at such elections, and the preparation of electoral rolls ;

(*c*) the qualifications for being elected at such elections as a member of a legislative body ;

(*d*) the filling of casual vacancies in any such body ;

(*e*) the conduct of elections under this Act and the methods of voting thereat ;

(*f*) the expenses of candidates at such elections ;

(*g*) corrupt practices and other offences at or in connection with such elections ;

(*h*) the decision of doubts and disputes arising out of, or in connection with, such elections ;

(*i*) matters ancillary to any such matter as aforesaid.

Provisions as to certain legal matters.

Existing law of India to continue in force.

292. Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the law in force in British India immediately before the commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority.

Adaptation of existing Indian laws, &c.

293. His Majesty may by Order in Council to be made at any time after the passing of this Act provide that, as from such date as may be specified in the Order, any law in force in British India or in any part of British India shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Act and, in particular, into accord with the provisions thereof which reconstitute under different names governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces :

Provided that no such law as aforesaid shall be made applicable to any Federated State by an Order in Council made under this section.

In this section the expression "law" does not include an Act of Parliament but includes any ordinance, order, byelaw, rule or regulation having in British India the force of law.

Foreign jurisdiction.

294. (1) Neither the executive authority of the Federation nor the legislative power of the Federal Legislature shall extend to any area in a Federated State which His Majesty in signifying his acceptance of the Instrument of Accession of that State may declare to be an area theretofore administered by or on behalf of His Majesty to which it is expedient that the provisions of this subsection should apply, and references in this Act to a Federated State shall not be construed as including references to any such area:

Provided that—

(*a*) a declaration shall not be made under this subsection with respect to any area unless, before the execution by the Ruler of the Instrument of Accession, notice has been given to him of His Majesty's intention to make that declaration,

(*b*) if His Majesty with the assent of the Ruler of the State relinquishes his powers and jurisdiction in relation to any such area or any part of any such area, the foregoing provisions of this subsection shall cease to apply to that area or part, and the executive authority of the Federation and the legislative power of the Federal Legislature shall extend thereto in respect of such matters and subject to such limitations as may be specified in a supplementary Instrument of Accession for the State.

Nothing in this subsection applies to any area if it appears to His Majesty that jurisdiction to administer the area was granted to him solely in connection with a railway.

(2) Subject as aforesaid and to the following provisions of this section, if, after the accession of a State becomes effective, power or jurisdiction therein with respect to any matter is, by virtue of the Instrument of Accession of the [illegible] or subject to limits, by the Federation, the [illegible] urt, the Federal Railway Authority, or a [illegible] power of jurisdiction by virtue of an Act of the Federal Legislature, or is, by virtue of an agreement made under Part VI of this Act in relation to the administration of a law of the Federal Legislature, exercisable, either generally or subject to limits, by the Ruler or his officers, then any power of jurisdiction formerly exercisable on His Majesty's behalf in that State, whether by virtue of the Foreign Jurisdiction Act, 1890*, or otherwise, shall not be exercisable in that State with respect to that matter or, as the case may be, with respect to that matter within those limits.

(3) So much of any law as by virtue of any power exercised by or on behalf of His Majesty to make laws in a State is in force in a Federated State immediately before the accession of the State becomes effective and might by virtue of the Instrument of Accession of the State be re-enacted for that State by the Federal Legislature, shall continue in force and be deemed for the purposes of this Act to be a Federal law so re enacted:

Provided that any such law may be repealed or amended by Act of the Federal Legislature and unless continued in force by such an Act shall cease to have effect on the expiration of five years from the date when the accession of the State becomes effective.

(4) Subject as aforesaid, the powers and jurisdiction exercisable by or on behalf of His Majesty before the commencement of Part III of this Act in Indian States shall continue to be exercisable, and any Order in Council with respect to the said powers or jurisdiction made under the Foreign Jurisdiction

* 53 and 54 Vict. c. 37.

Act, 1890, or otherwise, and all delegations, rules and orders made under any such Order, shall continue to be of full force and effect until the Order is amended or revoked by a subsequent Order :

Provided that nothing in this subsection shall be construed as prohibiting His Majesty from relinquishing any power or jurisdiction in any Indian State.

(5) An Order in Council made by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, empowering any person to make rules and orders in respect of courts or administrative authorities acting for any territory shall not be invalid by reason only that it confers, or delegates powers to confer, on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers, or delegates power to confer, appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

(6) In the Foreign Jurisdiction Act, 1890, the expression "a British court in a foreign country" shall, in relation to any part of India outside British India, include any person duly exercising on behalf of His Majesty any jurisdiction, civil or criminal, original or appellate, whether by virtue of an Order in Council or not, and for the purposes of section nine of that Act the Federal Court shall, as respects appellate jurisdiction in cases tried by a British Court in a Federated State, be deemed to be a Court held in a British Possession or under the authority of His Majesty.

(7) Nothing in this Act shall be construed as limiting any right of His Majesty to determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States

(8) Nothing in this section affects the provisions of this Act with respect to Berar.

Provisions as to death sentences.

295. (1) Where any person has been sentenced to death in a Province, the Governor General in his discretion shall have all such powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council immediately before the commencement of Part III of this Act, but save as aforesaid no authority in India outside a Province shall have any power to suspend, remit or commute the sentence of any person convicted in the Province :

Provided that nothing in this subsection affects any power of any officer of His Majesty's forces to suspend, remit or commute a sentence passed by a court martial.

(2) Nothing in this Act shall derogate from the right of His Majesty, or of the Governor-General, if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishment.

Courts of Appeal in revenue matters.

296. (1) No member of the Federal or a Provincial Legislature shall be a member of any tribunal in British India having jurisdiction to entertain appeals or revise decisions in revenue cases.

(2) If in any Province any such jurisdiction as aforesaid was, immediately before the commencement of Part III of this Act, vested in the Local Government, the Governor shall constitute a tribunal, consisting of such person or persons as he, exercising his individual judgment, may think fit, to exercise the same juridiction until other provision in that behalf is made by Act of the Provincial Legislature.

(3) There shall be paid to the members of any tribunal constituted under the last preceding snbsection, such salaries and allowances as the Governor exercising his individual judgment may determine, and those salaries and allowances shall be charged on the revenues of the Province.

Prohibition of certain restrictions on internal trade.

297. (1) No Provincial Legislature or Government shall—

(*a*) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from, the Province of goods of any class or description ; or

(*b*) by virtue of anything in this Act have power to impose any tax, cess, toll, or due which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former [illegible] duced outside the Provinc[illegible] duced in one locality [illegible] locality.

(2) Any law passed in contravention of this section shall, to the extent of the contravention, be invalid.

Persons not to be subjected to disability by reason of race, religion, &c.

298. (1) No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India.

(2) Nothing in this section shall affect the operation of any law which—

(*a*) prohibits, either absolutely or subject to exceptions, the sale or mortgage of agricultural land situate in any particular area, and owned by a person belonging to some class recognised by the law as being a class of persons engaged in or connected with agriculture in that area, to any person not belonging to any such class ; or

(*b*) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law.

(3) Nothing in this section shall be construed as derogating from the special responsibility of the Governor-General or of a Governor for the safeguarding of the legitimate interests of minorities.

Compulsory acquisition of land, &c.

299. (1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or, in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking.

Protection for certain rights, privileges and pensions.

300. (1) The executive authority of the Federation or of a Province shall not be exercised, save on an order of the Governor General or Governor, as the case may be, in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title of or to land, or of or to any right or privilege in respect of land or land revenue, being a grant or confirmation made before the first day of January, one thousand eight hundred and seventy, or made on or after that date for services rendered.

(2) No pension granted or customarily payable before the commencement of Part III of this Act by the Governor-General in Council or any Local Government on political considerations or compassionate grounds shall be discontinued or reduced, otherwise than in accordance with any grant or order regulating the payment thereof, save on an order of the Governor-General in the exercise of his individual judgment or, as the case may be, of the Governor in the exercise of his individual judgment, and any sum required for the payment of any such pension shall be charged on the revenues of the Federation or, as the case may be, the Province.

(3) Nothing in this section affects any remedy for a breach of any condition on which a grant was made

Repeal of s. 18 of 21 Geo 3, c. 70, and s. 12 of 37 Geo. 3, c. 142.

301. Section eighteen of the East India Company Act, 1780, and section twelve of the East India Act, 1797 (being obsolete enactments containing savings for native law and custom) are hereby repealed

High Commissioner.

High Commissioner for India

302. (1) There shall be a High Commissioner for India in the United Kingdom who shall be appointed, and whose salary and conditions of service shall be prescribed, by the Governor-General, exercising his individual judgment

(2) The High Commissioner shall perform on behalf of the Federation such functions in connection with the business of the Federation, and, in particular, in relation to the making of contracts as the Governor General may from time to time direct

(3) The High Commissioner may, with the approval of the Govenor General and on such terms as may be agreed, undertake to perform on behalf of a Province of Federated State, or on behalf of Burma, functions similar to those which he performs on behalf on the Federation.

General Provisions.

Provisions as to Sheriff of Calcutta

303. (1) The Sheriff of Calcutta shall be appointed annually by the Governor of Bengal from a panel of three persons to be nominated on the occasion of each vacancy by the High Court in Calcutta

(2) The Sheriff shall hold office during the pleasure of the Governor and shall be entitled to such remuneration as the Governor may determine and no other remuneration

(3) In exercising his powers with respect to the appointment and dismissal of the Sheriff, and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment

Persons acting as Governor-General or Governor.

304. Any person appointed by His Majesty to act as Governor-General or the Governor of a Province during the absence the Governor-General or the Governor from I[illegible] or during any perid during which the G

General or the Governor is for any reason unable to perform the duties of his office, shall during, and in respect of, the period while he is so acting have all the powers and immunities, and be subject to all the duties of, the Governor-General or Governor, as the case may be, and, if he holds any other office, shall not act therein or be entitled to the salary and allowances appertaining thereto while he is acting as Governor-General or Governor.

Secretarial staffs of Governor-General and Governor.

305. (1) The Governor-General and every Governor shall have his own secretarial staff to be appointed by him in his discretion.

(2) The salaries and allowances of persons so appointed and the office accommodation and other facilities to be provided for them shall be such as Governor-General or, as the case may be, the Governor may in his discretion determine, and the said salaries and allowances and the expenses incurred in providing the said accommodation and facilities shall be charged on the revenues of the Federation or, as the case may be, the Province.

Protection of Governor-General, Governor or Secretary of State

306. (1) No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in India against the Governor-General, against the Governor of a Province, or against the Secretary of State, whether in a personal capacity or otherwise, and, except with the sanction of His Majesty in Council, no proceedings whatsoever shall lie in any court in India against any person who has been the Governor-General, the Governor of a Province, or the Secretary of State in respect of anything done or omitted to be done by any of them during his term of office in performance or purported performance of the duties thereof:

Provided that nothing in this section shall be construed as restricting the right of any person to bring against the Federation, a Province, or the Secretary of State such proceedings as are mentioned in chapter III of Part VII of this Act.

(2) The provisions of the preceding subsection shall apply in relation to His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States as they apply in relation to the Governor-General.

Removal of certain disqualifications on the occasion of the first elections to Legislature.

307. For the purposes of the first elections of persons to serve as members of the Federal Legislature and of Provincial Legislatures, no person shall be subject to any disqualification by reason only of the fact that he holds—

(*a*) an office of profit as a non-official member of the Executive Council of the Governor-General or a Governor, or as a minister in a Province;

(*b*) an office which is not a whole time office remunerated either by salary or by fees.

Procedure as respects proposals for amendment of certain provisions of Act and Orders in Council.

308. (1) Subject to the provisions of this section, if the Federal Legislature or any Provincial Legislature, on motions proposed in each Chamber by a minister on behalf of the council of ministers, pass a resolution recommending any such amendment of this Act or of an Order in Council made thereunder as is hereinafter mentioned, and on motions proposed in like manner, present to the Governor-General or, as the case may be, to the Governor an address for submission to His Majesty praying that His Majesty may be pleased to communicate the resolution to Parliament, the Secretary of State shall, within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament a statement of any action which it may be proposed to take thereon.

The Governor-General or the Governor, as the case may be, when forwarding any such resolution and address to the Secretary of State shall transmit therewith a statement of his opinion as to the proposed amendment and, in particular, as to the effect which it would have on the interests of any minority, together with a report as to the views of any minority likely to be affected by the proposed amendment and as to whether a majority of the representatives of that minority in the Federal or, as the case may be, the Provincial Legislature support the proposal, and the Secretary of State shall cause such statement and report to be laid before Parliament.

In performing his duties under this subsection the Governor-General or the Governor, as the case may be, shall act in his discretion

(2) The amendments referred to in the preceding subsection are—

(a) any amendment of the provisions relating to the size or composition of the Chambers of the Federal Legislature, or to the method of choosing or the qualifications of members of that Legislature, not being an amendment which would vary the proportion between the number of seats in the Council of State and the number of seats in the Federal Assembly, or would vary, either as regards the Council of State or the Federal Assembly, the proportion between the number of seats allotted to British India and the number of seats allotted to Indian States ;

(b) any amendment of the provisions relating to the number of Chambers in a Provincial Legislature or the size or composition of the Chamber, or of either Chamber, of a Provincial Legislature, or to the method of choosing or the qualifications of members of a Provincial Legislature ,

(c) any amendment providing that, in the case of women, literacy shall be substituted for any higher
as a qualification for the franc
shall be entered on electoral
purpose by them or on their behalf , and

(d) any other amendment of the provisions relating to the qualifications entitling persons to be registered as voters for the purposes of elections.

(3) So far as regards any such amendment as is mentioned in paragraph (c) of the last preceding subsection, the provisions of subsection (1) of this section shall apply to a resolution of a Provincial Legislature whenever passed, but, save as aforesaid, those provisions shall not apply to any resolution passed before the expiration of ten years, in the case of a resolution of the Federal Legislature, from the establishment of the Federation, and in the case of a resolution of a Provincial Legislature from the commencement of Part III of this Act

(4) His Majesty in Council may at any time before or after the commencement of Part III of this Act, whether the ten years referred to in the last preceding subsection have elapsed or not, and whether any such address as is mentioned in this section has been submitted to His Majesty or not, make in the provisions of this Act any such amendment as is referred to in subsection (2) of this section :

Provided that—

(i) if no such address has been submitted to His Majesty, then, before the draft of any Order which it is proposed to submit to His Majesty is laid before Parliament, the Secretary of State shall, unless it appears to him that the proposed amendment is of a minor or drafting nature, take such steps as His Majesty may direct for ascertaining the views of the Governments and Legislatures in India who would be affected by the proposed amendment and the views of any minority likely to be so affected, and whether a majority of the representatives of that minority in the Federal or, as the case may be, the Provincial Legislature support the proposal ;

(ii) the provisions of Part II of the First Schedule to this Act shall not be amended without the consent of the Ruler of any State which will be affected by the amendment.

Orders in Council

309. (1) Any power conferred by this Act on His Majesty in Council shall be exercisable only by Order in Council, and subject as hereinafter provided, the Secretary of State shall lay before Parliament the draft of any Order which it is proposed to recommend His Majesty to make in Council under any provision of this Act, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the form of the draft, or with such amendments as may have been agreed to by resolutions of both Houses:

Provided that, if at any time when Parliament is dissolved or prorogued or when both Houses of Parliament are adjourned for more than fourteen days, the Secretary of State is of opinion that on account of urgency an Order in Council should be made under this Act forthwith, it shall not be necessary for a draft of the Order to be laid before Parliament, but the Order shall cease to have effect at the expiration of twenty-eight days from the date on which the Commons House first sits after the making of the Order unless within that period resolutions approving the making of the Order are passed by both Houses of Parliament.

(2) Subject to any express provision of this Act, His Majesty in Council may by a subsequent Order, made in accordance with the provisions of the preceding subsection, revoke or vary any Order previously made by him in Council under this Act

(3) [illegible] His Majesty in Council made [illegible] Council, or to any Order of His [illegible] ceedings against a person who has been the Governor-General, His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, the Governor of a Province or the Secretary of State.

Power of His Majesty in Council to remove difficulties

310. (1) Whereas difficulties may arise in relation to the transition from the provisions of the Government of India Act to the provisions of this Act, and in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part II of this Act:

And whereas the nature of those difficulties, and of the provision which should be made for meeting them, cannot at the date of the passing of this Act be fully foreseen:

Now therefore, for the purpose of facilitating each of the said transitions His Majesty may by Order in Council—

(*a*) direct that this Act and any provisions of the Government of India Act still in force shall, during such limited period as may be specified in the Order, have effect subject to such adaptations and modifications as may be so specified.

(*b*) make, with respect to a limited period so specified such temporary provision as he [illegible] e transition is being effected and during the [illegible] there are available to all governments in [illegible] to enable the business of [illegible] of removing [illegible]

(2) No [illegible] om the provisions of Part XIII [illegible] ct shall be made under this se[illegible] establishment of the Federatio[illegible] under this section after the expiration of six months from the commencement of Part III of this Act.

Interpretation.

Interpretation, &c.

311. (1) In this Act and, unless the context otherwise requires, in any other Act the following expressions have the meanings hereby respectively assigned to them, that is to say :—

"British India" means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces ;

"India" means British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, the tribal areas, and any other territories which His Majesty in Council may, from time to time, after ascertaining the views of the Federal Government and the Federal Legislature, declare to be part of India ;

"Burma" includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the commencement of Part III of this Act comprised in India, being territories lying to the east of Bengal, the State of Manipur, Assam, and any tribal areas, connected with Assam ;

"British Burma" means so much of Burma as belongs to His Majesty ;

"Tribal areas" means the areas along the frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any foreign State ;

"Indian State" includes any territory, whether described as a State, an Estate, a Jagir or otherwise, belonging to or under the suzerainty of a Ruler who is under the suzerainty of His Majesty and not being part of British India ;

"Ruler" in relation to a State means the Prince, Chief or other person recognised by His Majesty as the Ruler of the State.

(2) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

"agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax ;

"borrow" includes the raising of money by the grant of annuities and "loan" shall be construed accordingly ;

"chief justice" includes in relation to a High Court a chief judge or judicial commissioner, and "judge" includes an additional judicial commissioner ;

"corporation tax" means any tax on so much of the income of companies as does not represent agricultural income, being a tax to which the enactments requiring or authorising companies to make deductions in respect of income-tax from payments of interest or dividends, or from other payments representing a distribution of profits, have no application ;

"corresponding Province" means in case of doubt such Province as may be determined by His Majesty in Council to be the corresponding Province for the particular purpose in question ;

"debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly ;

"existing Indian law" means any law, ordinance, order, byelaw, rule or regulation passed or made before the commencement of Part III of this Act by any legislature, authority or person in any territories for the time being comprised in British India, being a legislature, authority or person having power to make such a law, ordinance, order, byelaw, rule or regulation ;

"goods" includes all materials, commodities, and articles ;

"guarantee" includes any obligation undertaken before the commencement of Part III of this Act to make payments in the event of the profits of an undertaking falling short of a specified amount ;

... ot where it is expressly so provided, include

... any such Governor in Council, Governor acitng with ministers, Lieutenant-Governor in Council, Lieutenant-Governor or Chief Commissioner as was at the relevant time a Local Government for the purposes of the Government of India Act or any Act repealed by that Act, but does not, save where the context otherwise requires, include any local Government in Burma or Aden ;

"pension" in relation to persons in or formerly in the service of the Crown in India, Burma or Aden, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any such person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund ;

"Pleader" includes advocate ;

"Provincial Act" and "Provincial law" mean, subject to the provisions of this section, an Act passed or law made by a Provincial Legislature established under this Act ;

"public notification" means a notification in the Gazette of India or, as the case may be, the official Gazette of a Province ;

"securities" includes stock ;

"taxation" includes the imposition of any tax or impost whether general or local or special, and "tax" shall be construed accordingly ;

... y within a municipal area ;

... n Indian State railway but, save as

... nor railway ;

"Indian State railway" means a railway owned by a State and either operated by the State, or operated on behalf of the State otherwise than in accordance with a contract made with the State by or on behalf of the Secretary of State in Council, the Federal Government, the Federal Railway Authority, or any company operating a federal railway ;

"minor railway" means a railway which is wholly situate in one unit and does not form a continuous line of communication with a federal railway, whether of the same gauge or not ; and

"unit" means a Governor's Province, a Chief Commissioner's Province or a Federated State.

(3) No Indian State shall, for the purpose of any reference in this Act to Federated States, be deemed to have become a Federated State until the establishment of the Federation.

(4) In paragraph (3) of section ... (which paragraph defines the expres... the British Islands and of British ... "exclusive of the British Islands and o...

(5) Any Act of Parliament containing references to India or any part thereof, to countries other than or situate outside India or other than or situate outside British India, to His Majesty's dominions, to a British possession, to the Secretary of State in Council, to the Governor-General in Council, to a Governor in Council or to Legislatu... relating to the government or adm... have effect subject to such adaptati... Council may direct, being adaptatio... Majesty in Council to be necessary or expedient in consequence of this Act.

Any power of any legislature under this Act to repeal or amend any Act adapted or modified by an Order in Council under this subsection shall extend

* 52 & 53 Vict. C. 63.

to the repeal or amendment of that Order, and any reference in this Act to an Act of Parliament shall be construed as including a reference to any such Order.

(6) Any reference in this Act to Federal Acts or laws or Provincial Acts or laws, or to Acts or laws of the Federal or a Provincial Legislature, shall be *construed as including a reference to an ordinance made by the Governor-*General or a Governor-General's Act or, as the case may be, to an ordinance made by a Governor or a Governor's Act.

(7) References in this Act to the taking of an oath include references to the making of an affirmation.

PART XIII.

TRANSITIONAL PROVISIONS.

Operation of Part XIII

312. The provisions of this Part of this Act shall apply with respect to the period elapsing between the commencement of Part III of this Act and the establishment of the Federation.

Executive Government

313. (1) Subject to the provisions of this Act for the time being in force, such executive authority as is hereinafter mentioned shall be exercised on behalf of His Majesty by the Governor-General in Council, either directly or through officers subordinate to him, but nothing in this section shall prevent the Indian Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General in Council any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

(2) Subject to the provisions of this Act for the time being in force, the said executive authority extends—

(*a*) to the matters with repect to which the Indian Legislature has, under the said provisions, power to make laws ;

(*b*) to the raising in British India on behalf of His Majesty of naval, military or air forces, and to the governance of His Majesty's forces borne on the Indian establishment ,

(*c*) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise in and in relation to the tribal areas :

Provided that—

(i) the said authority does not, save as expressly provided in the provisions of this Act for the time being in force, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws ;

(ii) the said authority does not extend to the enlistment or enrolment in any force raised in British India of any person unless he is either a subject of His Majesty, or a native of India or of territories adjacent thereto ; and

(iii) commissons in any such force shall be granted by His Majesty, save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise

(3) References in the provisions of this Act for the time being in force to the Governor-General and the Federal Government shall, except as respects matters with respect to which the Governor-General is required by the said provisions to act in his discretion, be construed as references to the Governor-General in Council, and any reference to the Federation, except where the reference is to the establishment of the Federation, shall be construed as a reference to British India, the Governor-General in Council, or the Governor-General, as the circumstances and the context may require :

Provided that—

(*a*) any reference to the revenues of the Federation shall be construed as a reference to the revenues of the Governor-General in Council ;

(*b*) the revenues of the Governor General in Council shall, subject to the provisions of chapter 1 of Part VII of this Act with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to Provinces and to the provisions of this Act with respect to the Federal Railway Authority (so far as any such provisions are for the time being in force), include all revenues and public moneys raised or received either by the Governor-General in Council or by the Governor-General;

(*c*) the expenses of the Governor-General in discharging his functions as respects matters with respect to which he is required by the provisions of this Act for the time being in force to act in his discretion shall be defrayed out of the revenues of the Governor-General in Council.

(4) Any requirement in this Act that the Governor-General shall exercise his individual judgment with respect to any matter shall not come into force until the establishment of the Federation, but, notwithstanding that Part II of this Act has not come into operation, the following provisions of this Act, that is to say—

(*a*) the provisions requiring the prior-sanction of the Governor-General for certain legislative proposals;

(*b*) the provisions relating to broadcasting;

(*c*) the provisions relating to directions to, and principles to be observed by, the Federal Railway Authority; and

(*d*) the provisions relating to civil services to be recruited by the Secretary of State,

shall have effect in relation to defence, ecclesiastical affairs, external affairs and the tribal areas as they have effect in relation to matters or functions with respect to, or in the exercise of, which the Governor-General is by the provisions of this Act for the time being in force required to act in his discretion and any reference in any of the provisions of this Act for the time being in force to the special responsibilities of the Governor-General shall be construed as a reference to the special responsibilities which he will have when Part II of this Act comes into operation.

(5) Nothing in this section shall be construed as conferring on the Governor-General in Council any functions connected with the exercise of the functions of the Crown in its relations with Indian States.

Control of the Secretary of State

314. (1) The Governor General in Council and the Governor-General, both as respects matters with respect to which he is required by or under this Act to act in his discretion and as respects other matters, shall be under the general control of, and comply with such particular directions if any, as may from time to time be given by, the Secretary of State, but, the validity of anything done by the Governor-General in Council or the [illegible] it was [illegible] overnor-General in Council with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council except with the concurrence of his advisers.

(3) While this Part of this Act is in operation, the advisers of the Secretary of State shall not be more than twelve, nor less than eight, in number, and, notwithstanding anything in Part XI of this Act with respect to their term of office, on the establishment of the Federation such of the advisers as the Secretary of State may direct shall cease to hold office.

Sterling loans.

315. (1) While this Part of this Act is in operation, no sterling loans shall be contracted by the Governor-General in Council, but in lieu thereof, if provision is made in that behalf by an East India Loans Act of the Parliament of the

United Kingdom, the Secretary of State may, within such limits as may be prescribed by the Act, contract such loans on behalf of the Governor-General in Council.

(2) The Secretary of State shall not exercise any such powers of borrowing as are mentioned in this section unless at a meeting of the Secretary of State and his advisers the borrowing has been approved by a majority of the persons present.

(3) There shall be inserted—

(*a*) in paragraph (*d*) of subsection (1) of section one of the Trustee Act, 1925, after the words "on the revenues of India"; and

(*b*) at the end of sub paragraph (9) of paragraph (*a*) of section ten of the Trusts (Scotland) Act, 1921,

the words "or in any sterling loans raised by the Secretary of State on behalf of the Governor-General of India in Council under the provisions of Part XIII of the Government of India Act, 1935"

(4) No deduction in respect of taxes imposed by or under any existing Indian law or any law of the Indian, the Federal, or a Provincial Legislature shall be made, either before or after the establishment of the Federation, from any payment of principal or interest in respect of any loans contracted under this section.

(5) Any legal proceedings in respect of any loan raised under this section may, either before or after the establishmnet of the Federation, be brought in the United Kingdom against the Secretary of State, but nothing in this section shall be construed as imposing any liability on the Exchequer of the United Kingdom.

Legislature.

316. The powers conferred by the provisions of this Act for the time being in force on the Federal Legislature shall be exercisable by the Indian Legislature, and accordingly references in those provisions to the Federal Legislature and Federal Laws shall be construed as references to the Indian Legislature and laws of the Indian Legislature, and references in those provisions to Federal taxes shall be construed as references to taxes imposed by laws of the

Indian Legislature to
ncil to borrow money.

Continuance of certain provisions of Government of India Act.

317. (1) The provisions of the Government of India Act set out, with amendments consequential on the provisions of this Act, in the Ninth Schedule to his Act (being certain of the provisions of that Act relating to the Governor-General, the Commander-in-Chief, the Governor-General's Executive Council and the Indian Legislature and provisions supplemental to those provisions) shall, subject to those amendments, continue to have effect notwithstanding the repeal of that Act by this Act:

Provided that nothing in the said provisions shall affect the provisions of the last but one preceding section.

(2) In the said provisions, the expression "this Act" means the said provisions.

(3) The substitution in the said provisions of references to the Secretary of State for references to the Secretary of State in Council shall not render invalid anything done thereunder by the Secretary of State in Council before the commencement of Part III of this Act.

Provisions as to Federal Court and certain other Federal authorities.

318. (1) Notwithstanding that the Federation has not yet been established, the Federal Court and the Federal Public Service Commission and the Federal R[illegible] Authority shall come into existence and be [illegible] by those names, and shall perform in relat[illegible]

British India the like functions as they are by or under this Act to perform in relation to the Federation when established.

(2) Nothing in this section affects any power of His Majesty in Council to fix a date later than the commencement of Part III of this Act for the coming into operation, either generally or for particular purposes, of any of the provisions of this Act relating to the Federal Court, the Federal Public Service Commission or the Federal Railway Authority.

Rights and liabilities of Governor General in Council and Governor-General to continue after establishment of Federation.

319. (1) Any right acquired by, or liabilities incurred by or on behalf of, the Governor-General in Council or the Governor-General between the commencement of Part III of this Act and the establishment of the Federation shall, after the establisment of the Federation, . f the Federation, ig at the establishment of the Federation b . ' in Council or the Governor General shall, . : . . . . ation, be continued by or against the Federation.

(2) The provisions of subsection (1) of this section shall apply in relation to rights and liabilities of the Secretary of State in Council which have, by virtue of the provisions of this Act, become rights or liabilities of the Governor-General in Council as they apply in relation to the rights and liabilities therein mentioned.

PART XIV.

Burma

CHAPTER I.

INTRODUCTORY.

Government of Burma by the Crown

320. (1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of the territories in Burma for the time being vested in him and all rights, authority and jurisdiction exercisable by treaty, grant, usage, sufferance or otherwise in, or in relation to, any other territories in Burma, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty.

(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in relation to any territories in Burma by the Secretary of State, the Secretary of State in Council, the Governor-General of India, the Governor-General of India in Council, the Governor of Burma or the Local Government of Burma, whether by delegation from His Majesty or otherwise.

CHAPTER II.

THE EXECUTIVE.

The Governor.

Appointment and functions of the Governor

321. (1) The Governor of Burma is appointed by His Majesty by a Commission under the Royal Sign Manual and has all such powers and duties as are conferred or imposed on him by or under this Act, and such other powers of His Majesty as His Majesty may be pleased to assign to him.

(2) Any reference in this Act to the functions of the Governor shall be construed as not including a reference to powers exercisable by him by reason that they have been assigned to him by His Majesty under subsection (1) of this section.

(3) The provisions of the Tenth Schedule to this Act shall have effect with respect to the salary and allowances of the Governor, and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office, and with respect to persons appointed to act temporarily as Governor.

Executive authority of Burma.

322. (1) Subject to the provisions of this Act, the executive authority of Burma shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Burma Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred on any court, judge or officer, or any local or other authority, by any existing Indian or Burman law.

(2) The executive authority of Burma extends—

(a) to the raising in Burma on behalf of His Majesty of naval, military and air forces, and to the governance of His Majesty's forces borne on the Burma establishment :

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise in, and in relation to, any areas in Burma which are not part of the territories of His Majesty :

Provided that—

(i) the said authority does not extend to the enlistment or enrolment in any forces raised in Burma of any person unless he is either a subject of His Majesty, or a native of Burma or India, or of territories adjacent to Burma or India ; and

(ii) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of subsection (1) of the first section of this chapter or otherwise.

Administration.

Council of ministers.

323. (1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion :

Provided that nothing in this subsection shall be construed as preventing the Governor from exercising his individual judgment in any case where he is by or under this Act required so to do.

(2) The Governor in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

Other provisions as to ministers.

324. The Governor's ministers shall be chosen and summoned by the Governor, shall be sworn as members of the council, and shall hold office during his pleasure.

(2) A minister who for any period of six consecutive months is not a member of the Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Legislature may from time to time by Act determine, and, until the Legislature so determine, shall be determined by the Governor ;

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any court.

(5) The functions of the Governor with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries shall be exercised by him in his discretion.

Discretionary functions of Governor.

325. (1) The functions of the Governor with respect to defence, ecclesiastical affairs, the affairs of the areas specified in Part I of the Eleventh Schedule to this Act, and the control of monetary policy, currency and coinage, and with respect to external affairs, except the relations between Burma and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to areas in Burma which are not part of the territories of His Majesty shall be similarly exercised.

(2) To assist him in the exercise of those functions the Governor may appoint counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

Special responsibilities of Governor.

326. (1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say,—

(*a*) the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof;

(*b*) the safeguarding of the financial stability and credit of the Government of Burma;

(*c*) the safeguarding of the legitimate interests of minorities;

(*d*) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;

(*e*) the securing in the sphere of executive action of the purposes which the provisions of chapter v of this Part of this Act are designed to secure in relation to legislation;

(*f*) the prevention of action which would subject goods of United Kingdom or Indian origin imported into Burma to discriminatory or penal treatment;

(*g*) the securing of the peace and good government of the areas specified in part II of the Eleventh Schedule to this Act;

(*h*) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If, and in so far as, any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken.

Provisions as to Instrument of Instructions.

327. (1) The Secretary of State shall lay before Parliament a draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.

(2) The validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

Superintendence of Secretary of State.

328. (1) In so far as the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Secretary of State, but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section

(2) Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.

Financial adviser to Governor.

329. (1) The Governor may appoint a person to be his financial adviser.

(2) It shall be the duty of the Governor's financial adviser to assist by his advice the Governor in the discharge of his special responsibility for safeguarding the financial stability and credit of the Government of Burma and of his functions in respect of monetary policy, currency and coinage, and also to give advice to the Government of Burma upon any matter relating to finance with respect to which he may be consulted.

(3) The Governor's financial adviser shall hold office during the pleasure of the Governor and the salary and allowances of the financial adviser, and the numbers of his staff and their conditions of service, shall be such as the Governor may determine.

(4) The powers of the Governor with respect to the appointment and dismissal of a financial adviser and with respect to the determination of his salary and allowances, and the numbers of his staff and their conditions of service, shall be exercised by him in his discretion :

Provided that, if the Governor has determined to appoint a financial adviser, he shall, before making any appointment other than the first appointment, consult his ministers as to the person to be selected.

Advocate-General.

330. (1) The Governor shall appoint a person, being a person qualified to be appointed a judge of the High Court, to be Advocate-General for Burma.

(2) It shall be the duty of the Advocate General to give advice to the Go-ve [illegible] ies of [illegible] he G[illegible]

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration the Governor shall exercise his individual judgment.

Provisions as to police rules.

331. Where it is proposed that the Governor should by virtue of any powers vested in him make or amend, or approve the making or amendment of, any rules, regulations or orders relating to any police force, whether civil or military, he shall exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organisation or discipline of that force.

Provisions as to crimes of violence intended to overthrow Government.

332. (1) If it appears to the Governor that the peace or tranquillity of Burma is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor

if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall to such extent as may be specified in the direction be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.

(2) The functions imposed on the Governor by this section shall be exercised by him in his discretion.

(3) *Nothing in this section affects the special responsibility of the* Governor for the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof.

Sources of certain information not to be disclosed.

333. The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been or may be *obtained with respect to the operations of persons* committing, or conspiring, preparing or attempting to commit, such crimes as are mentioned in the last preceding section, shall be disclosed or given—

(*a*) by any member of any police force in Burma to another member of that force except in accordance with directions of the Inspector-General of Police or Commissioner of Police, as the case may be, or to any other person except in accordance with directions of the Governor in his discretion; or

(*b*) by any other person in the service of the Crown in Burma *to any* person except in accordance with directions of the Governor in his discretion.

Conduct of business of Government.

334. (1) All executive action of the Government of Burma shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments m[illegible] Governor shall be authenticated in such [illegible] be made by him, and the validity of [illegible] authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor, and the appropriate [illegible] *minister concerned and of the Governor,* [illegible] him which involves, or appears to him [illegible]ibility of the Governor.

(5) In the discharge of his functions under subsections (2), (3) and (4) of this section the Governor shall act in his discretion after consultation with his ministers.

CHAPTER III.

THE LEGISLATURE.

General.

Constitution of the Legislature.

335. (1) There shall be for Burma a Legislature which shall consist of His Majesty, represented by the Governor, and two Chambers, to be known respectively as the Senate and the House of Representatives.

(2) The Senate shall consist of thirty-six members, and the House of Representatives shall consist of one hundred and thirty-two members.

(3) The said members shall be chosen in accordance with the provisions in that behalf contained in the Twelfth Schedule to this Act.

Sessions of the Legislature, prorogation and dissolution

336. (1) The Chambers of the Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this section, the Governor may in his discretion from time to time—

(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit;

(b) prorogue the Chambers;

(c) dissolve either Chamber or both Chambers simultaneously.

(3) The Chambers shall be summoned to meet for their first session on a day not later than such day as may be specified in that behalf by His Majesty in Council.

(4) Every Senate, unless sooner dissolved, shall continue for seven years from the date appointed for the first meeting thereof and no longer, and every House of Representatives, unless sooner dissolved, shall continue for five years from the date appointed for the first meeting thereof and no longer, and the expiration of the said period of seven years or the said period of five years shall operate as a dissolution of the Senate or the House of Representatives, as the case may be

Right of Governor to address, and send messages to, Chambers

337. (1) The Governor may in his discretion address either Chamber of the Legislature or both Chambers assembled together and for that purpose require the attendance of members.

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venient despatch consider any matter which they are required by the message to take into consideration.

Rights of ministers, counsellors and Advocate-General as respects Chambers.

338. Every minister, every counsellor and the Advocate-General shall have the right to speak in, and otherwise to take part in the proceedings of, either Chamber, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member, but shall not by virtue of this section be entitled to vote.

Officers of Chambers

339. (1) The Senate shall, as soon as may be, choose two members of the Senate to be respectively President and Deputy-President thereof, and, so often as the office of President or Deputy-President becomes vacant, the Senate shall choose another member to be President or Deputy-President, as the case may be.

(2) A member holding office as President or Deputy-President of the Senate shall vacate his office if he ceases to be a member of the Senate, may at any time resign his office by writing under his hand addressed to the Governor, and may be removed from his office by a resolution of the Senate passed by a majority of all the then members of the Senate; but no resolution for the purpose of this subsection shall be moved unless at least fourteen days notice has been given of the intention to move the resolution:

Provided that, whenever the Senate is dissolved, the President shall not vacate his office until immediately before the first meeting of the Senate after the dissolution.

(3) While the office of President is vacant, the duties of the office be performed by the Deputy-President, or, if the office of Deputy-P

is also vacant, by such member of the Senate as the Governor may appoint for the purpose, and during any absence of the President from any sitting of the Senate the Deputy-President or, if he is also absent, such person as may be determined by the rules of procedure of the Senate, or, if no such person is present, such other person as may be determined by the Senate, shall act as President.

(4) There shall be paid to the President and the Deputy-President of the Senate such salaries as may be respectively fixed by Act of the Legislature and, until provision in that behalf is so made, such salaries as the Governor may determine.

(5) The foregoing provisions of this section shall apply in relation to the House of R
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Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum.

340. (1) Save as provided in the last preceding section, all questions at any sitting or joint sitting of the Chambers shall be determined by a majority of votes of the members present and voting, other than the President or Speaker or person acting as such.

The President or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A Chamber of the Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the

, of the Senate less than twelve members
neeting of the House of Representatives less than one sixth of the total number of members thereof are present, it shall be the duty of the President or Speaker or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least twelve members, or, as the case may be, at least one-sixth of the members, are present.

Provisions as to members of Legislature.

Oath of members.

341. Every member of either Chamber shall, before taking his seat, make and subscribe before the Governor or some person appointed by him, an oath according to the form set out in the Fourteenth Schedule to this Act

Vacation of seats.

342. (1) No person shall be a member of both Chambers, and rules made by the Governor exercising his individual judgement shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other

(2) If a member of either Chamber—

(a) becomes subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section ; or

(b) by writing under his hand addressed to the Governor resigns his seat,

his seat shall thereupon become vacant.

(3) If for sixty days a member of either Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant :

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

Disqualifications for membership.

343. (1) A person shall be disqualified for being chosen as, and for being, a member of either Chamber—

(*a*) if he holds any office of profit under the Crown in Burma, other than an office declared by Act of the Legislature not to disqualify its holder;

(*b*) if he is of unsound mind and stands so declared by a competent court;

(*c*) if he is an undischarged insolvent;

(*d*) if, whether before or after the commencement of this Part of this Act, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of an offence or corrupt or illegal practice relating to elections which has been declared by Order in Council, or by an Act of the Legislature to be an offence or practice entailing *disqualification for membership of the Legislature, unless such period has* elapsed as may be specified in that behalf in the provisions of that Order or Act;

(*e*) if he has, whether before or after the commencement of this Part of this Act, been convicted in Burma or has, before the commencement of this Part of this Act, been convicted in British India, of any other offence, and has, in either case, been sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor may in his discretion allow in any particular case, has elapsed since his release.

(*f*) if, having been nominated as a candidate for the Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by *any Order in Council made under this Act or by any Act of the* Legislature, unless five years have elapsed from the date by which the return ought to have been lodged, or the Governor acting in his discretion has removed the disqualification:

Provided that a disqualification under paragraph (*f*) of this subsection shall not take effect until the expiration of one month from the date by which the return ought to have been lodged, or of such longer period as the Governor acting in his discretion may in any particular case allow.

(2) A per on shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence becomes disqualified by virtue of paragraph (*d*) or paragraph (*e*) of subsection (1) of this section is at the date of the disqualification a member of a Chamber, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if [illegible] n is brought [illegible] or petition [illegible] is preserved [illegible]

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in Burma by reason only that he is a minister.

Penalty for sitting and voting when not qualified, or when disqualified

344. If a person sits or votes as a member of either Chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of subsection (3) of the last preceding section, he shall be liable in respect each day on which he so sits or votes to a penalty of five hundred rupees to recovered as a debt due to the Government of Burma

Privileges, &c. of members.

345. (1) Subject to the povisions of this Part of this Act and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of the Legislature of any report, paper, votes or proceedings.

(2) In other respects the privileges of members of the Chambers of the Legislature shall be such as may from time to time be defined by Act of the Legislature and, until so defined, shall be such as were immediately before the commencement of this Part of this Act enjoyed by members of the Legislative Council of Burma.

(3) Notwithstanding anything in the foregoing provisions of this section, nothing in this Part of this Act shall be construed as conferring, or empowering the Legislature to confer, on either Chamber thereof or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a chamber when duly required by the chairman of the committee so to do :

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India or Burma, and safeguarding confidential matter from disclosure, as may be made by the Governor exercising his individual judgment.

(5) The provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

Salaries and allowances of members.

346. Members of either Chamber shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Legislature, and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Part of this Act applicable in the case of members of the Legislative Council of Burma.

Procedure Generally.

Rules of procedure.

347. (1) Each Chamber of the Legislature may make rules for regulating, subject to the provisions of this Part of this Act, their procedure and the conduct of their business:

Provided that as regards each Chamber the Governor shall in his discretion, after consultation with the President or the Speaker, as the case may be, make rules—

(a) for regulating t [illegible] the [illegible] tions Chamber in relation to [illegible] or to in so far as he is by or [illegible] exercise his individual judgment ;

(b) for securing the timely completion of financial business ;

(c) for prohibiting, save with the consent of the Governor in his discretion—

(i) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor and any foreign State or Prince ; or

(ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matters connected with territories in Burma not vested in His Majesty, or any matters arising out of or affecting the administration of any of the areas specified in Part I of the Eleventh Schedule to this Act ;

and, if and in so far as any rule so made by the Governor is inconsistent with any rule made by a Chamber, the rule made by the Governor shall prevail.

(2) The Governor, after consultation with the President of the Senate and the Speaker of the House of Representatives, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the commencement of this Part of this Act with respect to the Legislative Council of Burma shall have effect in relation to the Legislature, subject to such modifications and adaptations as may be made therein by the Governor in his discretion.

(4) At a joint sitting of the two Chambers the President of the Senate, or in his absence such person as may be determined by rules of procedure made under this section, shall preside

English to be used in Legislature.

348. All proceedings in the Legislature shall be conducted in the English language :

Provided that the rules of procedure of the Chambers and the rules with respect to joint sittings, shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

Restrictions on discussion in Legislature.

349. (1) No discussion shall take place in the Legislature with respect to the conduct of any judge of the High Court in the discharge of his duties.

(2) If the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.

Courts not to inquire into proceedings of the Legislature.

350 (1) The validity of any proceedings in the Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Legislature in whom powers are vested by or under this Part of this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be sub' to the jurisdiction of any court in respect of the exercise by him of powers.

CHAPTER IV.

Legislation.

Powers of the Legislature as to Legislation.

Extent of laws of Legislature.

351. (1) Subject to the provisions of this Part of this Act, the Legislature may make laws for the territories in Burma vested in His Majesty or any part thereof.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Act of the Legislature shall, on the ground that it would have extraterritorial operation, be deemed to be invalid in so far as it applies—

(*a*) to British subjects and servants of th Crown in any part of Burma; or

(*b*) to British subjects domiciled in Burma wherever they may be; or

(*c*) to or to persons on, ships or aircraft registered in Burma wherever they may be; or

(*d*) in the case of a law for the regulation or discipline of any naval, military, or air force raised in Burma, to members of and persons attached to, employed with or following, that force, wherever they may be.

Savings.

352. Nothing in this Part of this Act shall be taken—

(*a*) to affect the power of Parliament to legislate for Burma; or

(*b*) to empower the Legislature—

(i) to make any law affecting the Sovereign, or the Royal Family, or the succession to the Crown, or the sovereignty, dominion or suzeralnty of the Crown in any part of Burma, or the law of British nationality, or the Army Act, the Air Force Act, the Naval Discipline Act, or any similar law enacted by a competent authority in India, or the law of Prize or Prize Courts; or

(ii) except in so far as expressly permitted by this Part of this Act, to make any law amending any provisions of this Part of this Act, or any Order in Council made thereunder, or any rules made under this Part of this Act by the Secretary of State, or by the Governor in his discretion or in the exercise of his individual judgment.

Legislative procedure.

Introduction of Bills, &c.

353. (1) Subject to the provisions of chapter VI of this Part of this Act with respect
...amber of the Legislature.
...ot lapse by reason of the pro-

(3) A Bill pending in one Chamber which has not been passed by the other Chamber shall not lapse on a dissolution of that other Chamber, but save as aforesaid all Bills shall lapse on a dissolution of either Chamber.

Previous sanction of Governor required for certain legislative proposals.

354 (1) Unless the Governor in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Legislature, any Bill or any amendment which—

(*a*) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to Burma; or

(*b*) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or

(*c*) affects matters as respects which the Governor is by or under this Act required to act in his discretion; or

(*d*) repeals, amends or affects any Act relating to any police force; or

(*e*) affects the procedure for criminal proceedings in which European British subjects are concerned; or

(*f*) subjects persons not resident in Burma to greater taxation than *persons resident in Burma, or subjects companies not wholly controlled* and managed in Burma to greater taxation than companies wholly controlled and managed therein ; or

(*g*) affects the grant of relief from any Burma tax on income in respect of income taxed or taxable in the United Kingdom ; or

(*h*) affects immigration into Burma.

(2) Nothing in this section affects the operation of any other provision in this Part of this Act which requires the previous sanction of the Governor to the introduction of any Bill or the moving of any amendment.

Passing of Bills.

355 (1) *Subject to the provisions of this section, a Bill shall not be* deemed to have been passed by the Chambers of the Legislature, unless it has been agreed to by both Chambers, either without amendments or with such amendments only as are agreed to by both Chambers.

(2) If a Bill which has been passed by one Chamber and transmitted to the other is not, before the expiration of twelve months from its reception *by that other Chamber, presented to the Governor for his assent, the Governor* may summon the Chambers to meet in a joint sitting for the purpose of *deliberating and voting on the Bill :*

Provided that, if it appears to the Governor that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may in his discretion summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed.

(3) If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers :

Provide [illegible]

(*a*) [illegible]

by the othe [illegible]

is originate[illegible] ments, if any, as are made necessary by the delay in the passage of the Bill ;

(*b*) *if the Bill has been so passed and returned, only such amendments* as aforesaid shall be proposed to the Bill and such other amendments as are *relevant to the matters with respect to which the Chambers have not agreed ;* and the decision of the person presiding as to the amendments which are admissible under this subsection shall be final.

Assent to Bills, and power *of Crown to disallow Acts.*

356. (1) When a Bill has been passed by the Chambers it shall be presented to the Governor, and the Governor shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure :

Provided that the Governor may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or [illegible] *cular will consider the desir-* [illegible] as he may recommend in his [illegible] *Bill accordingly.*

(2) A Bill reserved for the signification of His Majesty's pleasure shall *not become an Act of the Legislature unless and until, within twelve months* from the day on which it was presented to the *Governor,* the Governor m known by public notification that *His Majesty has assented thereto.*

(3) Any Act assented to by the Governor may be disallowed by His Majesty within twelve months from the date of the Governor's assent, and, where any Act is so disallowed, the Governor shall forthwith make the disallowance known by public notification and as from the date of the notification the Act shall become void.

Requirements as sanctions and recommendations to be regarded as matters of procedure only.

357. (1) Where under any provision of this Part of this Act the previous sanction or recommendation of the Governor is required to the introduction or passing of a Bill or the moving of an amendment, the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Part of this Act with respect to the withholding of assent to, or the reservation of, Bills.

(2) No Act of the Legislature and no provision in any such Act shall be invalid by reason only that some previous sanction or recommendation was not given.

Legislative powers of Governor.

Legislation for areas mentioned in Eleventh Schedule.

358. (1) Notwithstanding anything in this chapter, no act of the Legislature shall apply to any area specified in the Eleventh Schedule to this Act unless the Governor by public notification so directs, and the ... direct that the ... rt thereof, have

(2) The Governor may make regulations for the peace and good government of any such area, and any regulations so made may repeal or amend any Act, whether passed before or after the commencement of this Part of this Act, which is for the time being applicable to the area.

(3) The provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations as they apply in relation to Acts of the Legislature.

Power of Governor to promulgate ordinances during recess of Legislature.

359. (1) If at any time when the Legislature is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinance as the circumstances appear to him to require:

Provided that the Governor—

(*a*) shall exercise his individual judgment as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature: and

(*b*) shall not without instructions from His Majesty promulgate any such ordinance, if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure.

... the same ... at the ... resolu- ... reed to ... relating to the power of His Majesty to disallow Acts as if it were an Act of the Legislature; and

(c) may be withdrawn at any time by the Governor.

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Legislature, it shall be void.

Power of Governor to promulgate ordinances at any time with respect to certain subjects.

360. (1) If at any time the Governor is satisfied that circumstances exsist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) A [illegible] section shall continue in operation for su[illegible] as may be specified therein, but may by a [illegible] a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Legislature, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the powers of His Majesty to disallow Acts as if it were an Act of the Legislature;

(b) may be withdrawn at any time by the Governor; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Legislature, it shall be void.

(5) The functions of the Governor under this section shall be exercised by him in his discretion.

Power of Governor in certain cases to enact Acts.

361 (1) If at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provisions should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential and either—

(a) enact forthwith, as a Governor's Act, a Bill containing such provisions as he considers necessary; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor takes such action as is mentioned in paragraph (b) of the preceding subsection, he may at any time after the expiration of one month enact, as a Governor's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them, or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein

(3) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Legislature, and, if and so far as it makes any provision which would not be valid if enacted in an Act of the Legislature, it shall be void.

(4) Every Governor's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor under this section shall be exercised by him in his discretion.

CHAPTER V.

Restrictions on Discrimination, etc.

British subjects domiciled in the United Kingdom and British India.

362. (1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Act of the Legislature as imposes any restriction on the right of entry into Burma :

Provided that no person shall by virtue of this subsection be entitled to

[illegible]

[illegible] undesirable persons, shall be deemed [illegible]

(2) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Act of the Legislature as imposes by refe [illegible] language, religion, domicile, residence, [illegible] liability, restriction or condition in regar[illegible] holding, or disposition of property, the holding of public office, or the carrying on of any occupation, trade, business or profession :

Provided that no such person as aforesai[illegible] be entitled to exemption from any such [illegible] condition as aforesaid if and so long as [illegible] are by or under the law of the United Kingc[illegible] to a like disability, liability, restriction o[illegible] same subject matter by reference to the same principle of distinction.

(3) The provisions of subsection (2) of this section shall apply in relation to British subjects domiciled in India and subjects of any Indian State as they apply in relation to British subjects domiciled in the United Kingdom, but with the substitution in the proviso to the said subsection for references to the United Kingdom of references to British India or, as the case may be, that Indian State :

Provided that nothing in this subsection shall affect any restriction lawfully imposed on the right of entry into Burma of persons who are British subjects domiciled in India or subjects of any Indian State, or any restriction lawfully imposed as a condition of allowing any such person to enter Burma.

(4) Notwithstanding anything in this section, if the Governor by public notification certifies that for the prevention of any grave menace to the peace or tranquillity of any part of Burma, or for the purposes of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of this section should be wholly or partially suspended in relation to any Act, then while the notification is in force the [illegible] be suspended accordingly. [illegible] under this subsection shall be exercised by [illegible]

Taxation.

363. (1) No Act of the Legislature which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or India or subjects of any Indian State, or against companies incorporated whether before or after the passing of this Act by or under the laws of the United Kingdom or British India, and any Act passed or made in contravention of this section shall, to the extent of the contravention, be invalid.

(2) Without prejudice to the generality of the foregoing provisions, an Act shall be deemed to be such as to discriminate against such persons or companies as aforesaid if it would result in any of them being liable to greater taxation than that to which they would have have been liable if they were domiciled in Burma or incorporated by or under the laws of Burma, as the case may be.

Companies.

364. Subject to the following provisions of this chapter, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock, or bonds, and its officers, agents, and servants shall be deemed to comply with so much of any Act of the Legislature as imposes in regard to companies carrying on or proposing to carry on business in Burma requirements or conditions relating to or connected with—

(a) the place of incorporation of a company or the situation of its registered office, or the currency in which its capital or loan capital is expressed; or

(b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a . stock, debentures, debenture stock, or . . ants:

. , . shall by virtue of this subsection be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the laws of the United Kingdom in regard to companies incorporated by or under the laws of Burma and carrying on or proposing to carry on business in the United Kingdom.

(2) *If and in so far as any total or partial exemption from, or preferential* treatment in respect of, taxation imposed on companies by or under any Act *of the Legislature depends on compliance with conditions as to any of the* matters mentioned in the last preceding subsection, any company incorporated by or under the laws of the United Kingdom and carrying on business in Burma shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation *imposed by or under the laws of the United Kingdom on companies in*corporated by or under the laws of Burma and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned.

(3) The provisions of the two last preceding subsections shall apply in relation to companies incorporated by or under the laws of British India as they apply in relation to companies incorporated by or under the laws of the United Kingdom, with the substitution for references to the United Kingdom of references to British India.

(4) Subject to the following provisions of this chapter, a British subject domiciled in the United Kingdom shall be deemed to comply with so much of any Act of the Legislature as imposes in regard to companies incorporated or proposed to be incorporated, whether before or after the passing of this Act, by *or under the laws of Burma, any requirements or conditions relating to,* or connected with, the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company or of holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants:

Provided that no person shall by virtue of this section be deemed to comply with *any such requirement or condition as aforesaid if and so long as a like* requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated or proposed to be incorporated by or under the laws of the United Kingdom on British subjects domiciled in Burma.

(5) If and in so far as, in the case of any such companies as are mentioned in the last preceding subsection, any total or partial exemption from, or preferential treatment in respect of, taxation imposed by or under any Act of the Legislature depends on compliance with conditons as to any of the matters so mentioned, then, as regards such of the members of its governing body and such of the holders of its shares, stock, debentures, debenture stock or bonds, and such of its
subjects domiciled in the United Kir
to satisfy those conditions and be en
ment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under those laws does not, as regards such of the members of a company's governing body, or such of the holders of its shares, stock, debentures, debenture stock or bonds, or such of its officers, agents, or servants, as are British subjects domiciled in Burma, depend on compliance with conditions as to any of the matters so mentioned.

(6) The provisions of the two last preceding subsections shall apply in relation to British subjects domiciled in British India and to subjects of any Indian State as they apply in relation to British subjects domiciled in the United Kingdom, with the substitution for references to the United Kingdom of references to British India or that Indian State, as the case may be.

Ships and aircraft.

365. (1) No ship registered in the United Kingdom shall be subjected by or under any Act of the Legislature to any treatment affecting either the ship herself, or her master, officers, crew, passengers or cargo, which is discriminatory in favour of ships registered in Burma, except in so far as ships registered in Burma are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships

to ships regis-
in the United
dom of referen-
ces to British India.

(3) This section shall apply in relation to aircraft as it applies in relation to ships.

(4) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this chapter.

Subsidies for the encouragement of trade or industry.

366. (1) Notwithstanding anything in any Act of the Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in Burma, shall be eligible for any grant, bounty or subsidy payable out of public moneys in Burma for the encouragement of any trade or industry to the same extent as companies incorporated by or under the laws of Burma are eligible therefor:

Provided that this subsection shall not apply in relation to any grant, bounty or subsidy payable out of public moneys for the encouragement of any trade or industry, if and so long as under the law of the United Kingdom for the time being in force companies incorporated by or under the laws of Burma and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the United Kingdom for the encouragement of the same trade or industry.

(2) Notwithstanding anything in this chapter, an Act of the Legislature may require, in the case of a company which at the date of the passing of that Act was not engaged in Burma in that branch of trade or industry which it is the

purpose of the Act to encourage, that the company shall not be eligible for any grant, bounty or subsidy under the Act unless—

(a) the company is incorporated by or under the laws of Burma ; and

(b) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe are British subjects domiciled in Burma ; and

(c) the company gives such reasonable facilities for the training of British subjects domiciled in Burma as may be so prescribed

(3) . incorporated by or under the law ... be carrying on business in Burma ... from ports in Burma.

(4) The foregoing provisions of this section shall apply in relation to companies incorporated by or under the laws of British India as they apply in relation to companies incorporated by or under the laws of the United Kingdom with the substitution for references to the United Kingdom of references to British India.

Supplemental.

367. The foregoing provisions of this Chapter shall apply in relation to any ordinance, order, byelaw, rule or regulation passed or made after the passing of this Act and having by virtue of any existing Indian or Burman law, or of any Act of the Legislature, the force of law, as they apply in relation to Acts of the Legislature, but, save as aforesaid, nothing in those provisions shall affect the operation of any existing Indian or Burman law.

Power to secure reciprocal treatment by convention.

368. (1) If a convention is made between His Majesty's Government in the United Kingdom and the Government of Burma, whereby similarity of treatment is assured, in the United Kingdom to British subjects domiciled in Burma and to companies incorporated by or under the laws of Burma, and in Burma to British subjects domiciled in the United Kingdom and to Companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this chapter, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in Burma for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation and, while any such Order is in force, the operation of those sections shall to that extent be suspended.

(2) As from the establishment of the Federation of India, the provisions of subsection (1) of this section shall apply in relation to British subjects domiciled in British India and to companies incorporated by or under the laws of British India as they apply in relation to British subjects domiciled in the United Kingdom and companies incorporated by or under the laws of the United Kingdom, with the substitution for references to His Majesty's Government in the United Kingdom, and the United Kingdom, of references to the Federal Government and British India.

(3) An Order in Council under this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

Professional and technical qualifications in general.

369. (1) No Bill or amendment which prescribes or empowers any authority to prescribe the professional or technical qualifications which are to be requisi for any purpose in Burma shall be introd or moved in either Chamber of the Legislature without the previous sa of the Governor in his discretion.

(2) The Governor shall not give his sanction for the purposes of the preceding subsection unless he is satisfied that the proposed legislation is so framed as to secure that no person who, immediately before the coming into operation of any disability, liability, restriction or condition to be imposed by or under that legislation, was lawfully practising any profession, carrying on any occupation, trade or business, or holding any office in Burma shall, except in so far as may be necessary in the interests of the public, be debarred from continuing to practise that profession, carry on that occupation, trade or business, or hold that office, or from doing anything in the course of that profession, occupation, trade or business, or in the discharge of the duties of that office, which he could lawfully have done if that disability, liability, restriction or condition had not come into operation.

(3) All regulations made under the provisions of any Act of the Legislature which prescribe the professional or technical qualifications which are to be requisite for any purpose in Burma, or impose by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in Burma shall, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor, and, if within two months from the date of the publication complaint is made to him that the regulations or any of them will operate unfairly as against any class of persons affected thereby, then, if he is of opinion that the complaint is well founded, he may, at any time before the regulations are expressed to come into operation, by public notification disallow the regulations or any of them.

In this subsection the expression "regulations" includes rules, byelaws, orders and ordinances

In the discharge of his functions under this subsection the Governor shall exercise his individual judgment.

(4) If the Governor exercising his individual judgment by public notification directs that the provisions of the last preceding subsection shall apply in relation to any existing Indian or Burman law, those provisions shall apply in relation to that law accordingly.

Medical qualifications.

370. (1) So long as the condition set out in subsection (3) of this section continues to be fulfilled, a British subject domiciled in the United Kingdom or Burma who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not, by or under any law in force in Burma, be excluded from practising medicine, surgery or midwifery in Burma, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless the law of Burma makes provision for securing—

(*a*) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor and to the

ved by the proposal to exclude holders of that diploma from practice or re-

tration in Burma, that body or person may make an application to the Privy Council, and the Privy Council, after giving to such authorities and persons both in Burma and in the United Kingdom as they think fit an opportunity of tendering evidence or submitting representations in writing, shall determine whether the diploma in question does or does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of the medicine, surgery and midwifery, and shall notify their determination to the Governor, who shall communicate it to such authorities, and cause it to be published in such manner, as he thinks fit.

(3) The conditions referred to in subsection (1) of this section is that British subjects domiciled in Burma who hold a medical diploma granted after examination in British Burma shall not be excluded from practising medicine, surgery or midwifery in the United Kingdom or from being registered therein as qualified medical practitioners, except on the ground that that diploma does not furnish a sufficient guarantee of the possession of requisite knowledge and skill for the practice of medicine, surgery and midwifery, and sha [illegible] the law of the United Kingdc [illegible] as to the sufficiency of that [illegible] ivy Council.

(4) A medical practitioner entitled to practise or be registered in Burma [illegible] Kingdom, or in the United [illegible] British Burma, shall not in the [illegible] bility, disability, restriction or condition to which persons entitled to practise by virtue of diplomas granted in the other country are not subject.

(5) The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply in relation to British subjects domiciled in India who, by virtue of medical diplomas granted to them in British India [illegible] ed to be, registered in the United [illegible] as they apply in relation to British [illegible] who, by virtue of medical diplomas [illegible] tled to be, registered in the [illegible] say,—

(*a*) subsection (3) shall not apply and the reference in subsection (1) to the condition set out therein shall be deemed to be omitted ;

(*b*) any reference in subsection (2) or subsection (4) to the United Kingdom shall be construed as a reference to British India

(6) Nothing in this section shall be construed as affecting any power of any recognised authority in the United Kingdom or Burma to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground

(7) In this section the expression "diploma" includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.

Medical officers of His Majesty's forces.

371. A person who holds a commission from His Majesty as a medical officer in any branch of His Majesty's forces and is on the active list shall by virtue of that commission be deemed to be qualified to practise medicine, surgery and midwifery in Burma and be entitled to be registered in Burma as so qualified.

Application to certain Companies.

372. *In this chapter*—

(*a*) references to companies incorporated by or under the laws of Burma include references to companies incorporated by or under the laws of British

(2) The Governor shall not give his sanction for the purposes of the preceding subsection unless he is satisfied that the proposed legislation is so framed as to secure that no person who, immediately before the coming into operation of . to be imposed by or under the ion, carrying on any occupation, na shall, except in so far as may be necessary in the interests of the public, be debarred from continuing to practise that profession, carry on that occupation, trade or business, or hold that office, or from doing anything in the course of that profession, occupation, trade or business, or in the discharge of the duties of that office, which he could lawfully have done if that disability, liability, restriction or condition had not come into operation.

(3) All regulations made under the provisions of any Act of the Legislature which prescribe the professional or technical qualifications which are to be requisite for any purpose in Burma, or impose by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession, the carrying on of any occupation, trade or business, or the holding of any office in Burma shall, not less than four months before they are expressed to come into operation, be published in such manner as may be required by genera Governor, and, if within two months from the is made to him that the regulations or any of them will against any class of persons affectec complaint is well founded, he expressed to come into operation, or any of them.

In this subsection the expression "regulations" includes rules, byelaws, orders and ordinances.

In the discharge of his functions under this subsection the Governor shall exercise his individual judgment.

dividual judgment by public noti preceding subsection shall apply law, those provisions shall apply in relation to that law accordingly.

370. (1) So long as the condition set out in subsection (3) of this section continues to be fulfilled, a British subject domi a who, by is, or is cal practitioner shall not, by or under any law in force in Burma, be excluded from practising medicine, surgery or midwifery in Burma, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless the law of Burma makes provision for securing—

(*a*) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor and to the

ved by the proposal to exclude holders of that diploma from practice

tration in Burma, that body or [illegible] Privy Council, and the Privy Council [illegible] persons both in Burma and in the Unit[illegible] nity of tendering evidence or submitting representations in writing, shall determine whether the diploma in question does or does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of the medicine, surgery and midwifery, and shall notify their determination to the Governor, who shall communicate it to such authorities, and cause it to be published in such manner, as he thinks fit

(3) The conditions referred to in subsection (1) of this section is that British subjects domiciled in Burma who hold a medical diploma granted [illegible] rma shall not be excluded from practising [illegible] in the United Kingdom or from being [illegible] medical practitioners, except on the ground [illegible] a sufficient guarantee of the possession of requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall only be excluded on that ground so long as the law of the United Kingdom makes provision for enabling any question as to the sufficiency of that diploma to be referred to and decided by the Privy Council.

(4) A medical practitioner entitled to practise or be registered in Burma by virtue of a diploma granted in the United Kingdom, or in the United Kingdom by virtue of a diploma granted in British Burma, shall not in the practice of his profession be subjected to any liability, disability, restriction or condition to which persons entitled to practise by virtue of diplomas granted in the other country are not subject.

(5) The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply in relation to British subjects domiciled in India who, by virtue of medical diplomas granted to them in British India [illegible] the United [illegible] on to British [illegible] cal diplomas [illegible] tered in the [illegible] (1) to the [illegible]

(b) any reference in subsection (2) or subsection (4) to the United Kingdom shall be construed as a reference to British India.

(6) Nothing in this section shall be construed as affecting any power of any recognised authority in the United Kingdom or Burma to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.

(7) In this section the expression "diploma" includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.

Medical officers of His Majesty's forces.

371. A person who holds a commission from His Majesty as a medical officer in any branch of His Majesty's forces and is on the active list shall by virtue of that commission be deemed to be qualified to practise medicine, surgery and midwifery in Burma and be entitled to be registered in Burma as so qualified.

Application to certain Companies.

372. In this chapter—

(a) references to companies incorporated by or under the laws of Burma include references to companies incorporated by or under the laws of British

India and registered in Burma, but do not include references to companies so incorporated which were registered elsewhere ;

(*b*) references to companies incorporated by or under the laws of British India do not include references to companies registered in Burma.

CHAPTER VI.

FINANCE.

General.

Meaning of "revenues of Burma".

373. Subject to the provisions of this chapter with respect to the Federated Shan States and to the provisions of this Part of this Act with respect to the Burma Railway Board, the expression "revenues of Burma" includes all revenues and public moneys raised or received by the Government of Burma.

Expenditure defrayable out of revenues of Burma.

374. No burden shall be imposed on the revenues of Burma except for the purposes of Burma or some part of Burma.

Provisions as to the custody of public moneys of Burma.

375. (1) Rules may be made by the Governor for the purpose of securing that all moneys received on account of the revenues of Burma shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Government of Burma, and the rules so made may prescribe or authorise some person to prescribe the procedure to be followod in respect of the payment of moneys into the said account, the withdrawal of moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid.

(2) In the exercise of his powers under his section the Governor shall exercise his individual judgment.

Duty of the Government of Burma to keep Secretary of State supplied with funds.

376. (1) The Government of Burma shall secure that there are from time to time in the hands of the Secretary of State sufficient moneys to enable him to make such payments as he may have to make in respect of any liability which falls to be met out of the revenues of Burma.

(2) Without prejudice to their obligations under the preceding subsection, the Government of Burma shall secure that there are from time to time in the hands of the Secretary of State, and any High Commissioner representing the Government of Burma in the United Kingdom, sufficient moneys to enable payment to be made of all pensions payable out of the revenues of Burma in the United Kingdom or through officers accounting to the Secretary of State or to any such High Commissioner as aforesaid.

Proceedings in the Legislature.

Annual financial statement.

377. (1) The Governor shall in respect of every financial year cause to be laid before both Chambers of the Legislature a statement of the estimated receipts and expenditure of the Government of Burma for that year, in this chapter referred to as the "annual financial statement"

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(*a*) the sums required to meet expenditure described by this Part of this Act as expenditure charged upon the revenues of Burma ; and

(*b*) the sums required to meet other expenditure proposed to be made from the revenues of Burma,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of Burma :—

(*a*) the salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council;

(*b*) debt charges for which the Government of Burma is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(*c*) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the Advocate-General and of the staff of the financial adviser;

(*d*) the salaries, allowances and pensions payable to and in respect of of judges of the High Court;

(*e*) expenditure for the purpose of the discharge by the Governor of his functions with respect to defence, ecclesiastical affairs, monetary policy, currency and coinage, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to areas in Burma which are not part of the territories of His Majesty and his functions in relation to the administration of any area specified in Part I of the Eleventh Schedule to this Act: provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed two hundred and eighty-four thousand rupees, exclusive of pension charges;

(*f*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(*g*) any sums required to enable the Governor to pay such pensions and allowances *as he in his discretion may deem suitable to members of the* family or servants of any former Ruler of any territories in Burma;

(*h*) any other expenditure declared by this Part of this Act or any Act of the Legislature to be so charged

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of Burma shall be decided by the Governor in his discretion

Procedure in Legislature with respect to estimates.

378. (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of Burma shall not be submitted to the vote of the House of Representatives, but nothing in this subsection shall be construed as preventing the discussion in either Chamber of the Legislature of those estimates, other than estimates relating to expenditure referred to in subparagraph (*a*) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the House of Representatives, and the House of Representatives shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

Authentication of schedule of authorised expenditure.

379. (1) The Governor shall authenticate by his signature a schedule specifying—

(*a*) the grants made by the House of Representatives under the preceding section;

(*b*) the several sums required to meet the expenditure charged on revenues of Burma but not exceeding, in the case of any sum, the in the statement previously laid before the Chambers:

Provided that, if the House of Representatives have refused to assent to any demand for a grant or have assented to such a demand subject to a reduction of the amount specified therein, the Governor may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before the House of Representatives but shall not be open to discussion or vote in the Legislature.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of Burma shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

Supplementary statements of expenditure.

380. If in respect of any financial year further expenditure from the revenues of Burma becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before both Chambers of the Legislature a supplementary statement showing the estimated amount of that expenditure and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Special provisions as to financial Bills.

381. (1) A Bill or amendment making provision—

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of any guarantee by the Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Government; or

(c) for declaring any expenditure to be expenditure charged on the revenues of Burma, or for increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in the Senate.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand and payment of fees for licences, or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of Burma shall not be passed by either Chamber of the Legislature unless the Governor has recommended to that Chamber the consideration of the Bill.

Borrowing.

Borrowing powers and existing loans.

382. (1) The executive authority of Burma extends to borrowing upon the security of the revenues of Burma within such limits, if any, as may from time to time, be fixed by Act of the Legislature, and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) Any obligations of the Local Government of Burma which, immediately before the commencement of this Part of this Act, were secured upon its revenues, shall after the said date be secured upon the revenues of Burma.

Application of Colonial Stock Acts to stocks issued by Government of Burma.

383. (1) The Colonial Stock Acts, 1877 to 1900, shall, notwithstanding anything to the contrary in those Acts, apply in relation to sterling stock issued after the commencement of this Part of this Act and forming part of the public debt of Burma as they apply in relation to stock forming part of the public debt of any British Possession mentioned in those Acts, so, however, that nothing in section twenty of the Colonial Stock Act, 1877, shall be construed as compelling a person desirous of bringing proceedings to proceed in the manner therein specified and that, until Parliament otherwise determines, any conditions, prescribed by the Treasury under section two of the Colonial Stock Act, 1900, shall be deemed to have been complied with with respect to all such stock so issued by the Government of Burma.

(2) The expression "colonial stock" in section eleven of the Trusts (Scotland) Act, 1921, shall include any stock in relation to which the said Acts apply by virtue of this section.

Audit and Accounts.

Auditor-General of Burma

384. (1) There shall be [illegible] shall be [illegible] ly be re- [illegible] the like grounds as a judge of the High Court.

(2) The conditions of service of the Auditor-General shall be such as may be prescribed by His Majesty in Council, and he shall not be eligible for further office under the Crown in Burma after he has ceased to hold his office:

Provided that neither the salary of an Auditor-General, nor his rights in respect of leave of absence, pension or age of retirement, shall be varied to his disadvantage after his appointment.

(3) The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Government of Burma as may be prescribed by, or by rules made under, an Order of His Majesty in Council or by any subsequent Act of the Legislature varying or extending such an Order:

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor in his discretion.

(4) The salary, allowances and [illegible] tor General shall be charged on the [illegible] ances and pensions payable to or in [illegible] out of those revenues.

Accounts and audit.

385. (1) The accounts of the Government of Burma shall be kept in such form as the Auditor-General of Burma may, with the approval of the Governor, prescribe.

(2) The reports of the Auditor-General relating to the accounts of the Government of Burma shall be submitted to the Governor who shall cause them to be laid before the Legislature.

(3) If His Majesty in Council makes provision requiring the Auditor of Indian Home Accounts to perform in relation to Burma all or any of the functions which he performs in relation to India—

(*a*) any payments required by the Order to be made in respect of his services from the revenues of Burma shall be so made and shall be charged on those revenues;

(*b*) any reports submitted by the Auditor of Indian Home Accounts to the Auditor-General of Burma shall be included by the Auditor-General in the reports which under this chapter he is required to submit to the Governor, or to the Secretary of State.

Federated Shan States.

Provisions as to the Federated Shan States.

386. (1) Until His Majesty in Counc makes other provision, there shall continue t be a Federal Fund of the Federated Shan State under the control of the Governor in his discretion.

(2) His Majesty may by Order in Council—

(*a*) require contributions to be made to the said Fund out of the revenue of, or accruing in, the States comprised within the Federated Shan States;

(*b*) require payments (representing the share of the annual receipts of the Government of Burma on revenue account properly allocable to the said States, to be made from time to time out of the revenues of Burma to the said Fund;

(*c*) require payments (representing the share of the annual general expenses of the Government of Burma properly allocable to the said States) to be [illegible] dealt with.

(3) Any payments to be made under paragraph (*b*) of the last preceding subsection shall be charged on the revenues of Burma, and the amounts thereof and of any payments to be made under paragraph (*c*) of the said subsection shall be shown in the financial statements required by this chapter to be laid before the Burma Legislature but, save as aforesaid, nothing in this Part of this Act shall be construed as requiring any statement of payments into or out of the Federal Fund to be laid before that Legislature.

(4) Such accounts shall be kept in respect of the receipts and expenditure of the said Fund as the Auditor-General of Burma may, with the approval of the Governer in his discretion, prescribe, and the said accounts shall be audited by, or on behalf of, the Auditor General of Burma, who shall make annual reports thereon to the Secretary of State.

CHAPTER VII.

The Burma Railway Board.

Executive authority in respect of railways to be exercised by Railway Board.

387. (1) The executive authority of Burma in respect of the regulation and the construction, maintenance and operation of railways in Burma shall be exercised by a Railway Board (hereinafter referred to as "the Board").

(2) The said executive authority extends to the carrying on in connection with any railways operated by the Board of such other undertakings as either were being carried on in connection therewith by or on behalf of the Governor-General in Council immediately before the commencement of this Part of this [illegible] ised to carry on after the commencement of [illegible] y Act of the Legislature.

[illegible] in this section, the Government and its officers shall perform in regard to the construction, equipment and operation of railways, such functions for securing the safety both of members of the public and of persons operating the railways, including the holding of inquiries into the causes of accidents as in the opinion of the Government should be performed by persons independent of the Board.

So much of chapter ix of this Part of this Act as provides that powers in relation to the railway services of Burma shall be exercised by the Board shall not apply in relation to officers of the Government employed in the performance of any of the functions mentioned in this subsection.

Composition, &c. of Railway Board.

388. (1) The Board shall consist of a President and eight other members.

(2) The person who for the time being is, or is acting as, the chief executive officer of the railways operated by the Board (who shall be called the chief railway commissioner) shall be President of the Board

The said chief railway commissioner shall be a person with experience of railway administration, and shall be appointed, and may at any itme be removed from office, by the Governor in his discretion.

(3) Of the eight other members of the Board two shall be—

(a) a financial member, being a person with special experience of finance, who shall be appointed, and may at any time be removed from office, by the Governor exercising his individual judgment;

(b) the person who for the time being is, or is acting as, the secretary to the Government of Burma in the department which for the time being deals with the subject of railways.

The six other members of the Board are in this Part of this Act called the non official members

(4) Subject as aforesaid, the provisions of the Fifteenth Schedule to this Act, as supplemented or amended by any Act of the Legislature, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Board, and with respect to its proceedings and its liability to income-tax:

Provided that no Bill or amendment for supplementing or amending the said Schedule shall be introduced or moved in either Chamber of the Legislature without the previous sanction of the Governor in his discretion.

Directions and principles to be observed by Railway Board.

389. (1) The Board in discharging its functions under this Act shall act on business principles, due regard being had by it to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of its receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this chapter.

(2) In the discharge of its said functions the Board shall be guided by such instructions on questions of policy as may be given to it by the Government

If any dispute arises under this subsection between the Government and the Board as to whether a question is or is not a question of policy, the decision of the Governor in his discretion shall be final.

(3) The provisions of subsection (1) of this section shall apply in relation to the discharge by the Government of their functions with respect to railways as they apply in relation to the functions of the Board, but nothing in this subsection shall be construed as limiting the powers of the Governor under the next succeeding subsection.

(4) The provisions of this Part of this Act relating to the special responsibilities of the Governor, and to his duty as regards certain matters to exercise his functions in his discretion or to exercise his individual judgment, shall apply as regards matters entrusted to the Board as if the executive authority of Burma in regard to those matters were vested in him, and as if the functions of the Board as regards those matters were the functions of ministers, and the Governor may issue to the Board such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he is by or under this Act required to act in his discretion or to exercise his individual judgment, and the Board shall give effect to any directions so issued to it.

Conduct of business between Railway Board and Government.

390. (1) The Governor exercising his individual judgment, but after consultation with the Board, may make for the more convenient transaction of arising out of the relations between the G ment and the Board.

(2) The rules shall include provisions requiring the Board to transmit to the Government all such information with respect to its business as may be specified in the rules, or as the Governor may otherwise require to be so transmitted and, in particular provisions requiring the Board to bring to the notice of the Governor any matter under consideration by the Board which involves, or appears to it likely to involve, any special responsibility of the Governor.

Acquisition and sale of land by, and contracts and liabilities of, the Railway Board.

391. (1) Except in such classes of case as may be specified in regulations to be made by the Government, the Board shall not acquire or dispose of any land and, when it is necessary for the Board to acquire compulsorily any land for the purposes of its functions, the Government shall cause that land to be acquired on its behalf and at its expense.

(2) Contracts made by or on behalf of the Board shall be enforceable by or against the Board and not by or against the Government, and, subject to any provision which may hereafter be made by the Legislature, the Board may sue and be sued in the like manner and in the like cases as a company operating a railway might sue and be sued.

Finance of the Railway Board.

392. (1) The Board shall establish, maintain and control a fund (which shall be known as the "Railway Fund") and all moneys received by the Board, whether on revenue account or on capital account, in the discharge of its functions and all moneys provided, whether on revenue account or capital account, out of the revenues of Burma to enable it to discharge those functions shall be paid into that Fund, and all expenditure, whether on revenue account or on capital account, required for the discharge of its functions shall be defrayed out of that Fund :

Provided that nothing in this subsection shall prevent the Board from establishing and maintaining a separate provident fund for the benefit of persons who are or have been employed in connection with railways operated by the Board.

(2) The receipts of the Board on revenue account in any financial year shall be applied in—

(a) defraying the working expenses of the railways operated by the Board.

(b) [illegible] of any

(c) [illegible] this Act pensions a[illegible] on those revenues and so much of any pensions charged by this Act on the revenues of the Federation of India, as is attributable to service on railways in Burma ;

(d) making due provision for maintenance, renewals, improvements and depreciation of and on the railways operated by the Board ;

(e) making to the revenues of Burma any payments by way of interest which it is required by this chapter to make, and

(f) defraying other expenses properly chargeable against revenue in that year.

(3) Any surpluses on revenue account [illegible] in the accounts of the Board [illegible] ferred accordingly and shall form part of the revenues of Burma.

(4) The Government may provide any moneys, whether on revenue account or capital account, for the purposes of the Board but, where any moneys are so provided, the provision thereof shall be deemed to be expenditure and shall

accordingly be shown as such in the estimates of expenditure laid before the Chambers of the Legislature.

(5) The Board shall, on such conditions as may be agreed, entrust all its money which is not immediately needed to the bank to which the balances of the Government of Burma are entrusted, and employ that bank as its agents for all transactions in Burma relating to remittances, exchange and banking.

Provisions as to certain obligations of the Railway Board.

393. (1) There shall be *deemed to be owing from the Board to the* Government of Burma such sum as may be agreed between the Government of Burma and the Board, or, in default of agreement determined by the Governor in his discretion, to be equivalent to the amount of the moneys provided out of the revenues of Burma, or, before the commencement of this Part of this Act, out of the revenues of India, for capital purposes in connection with railways in Burma, and the Board shall out of its receipts on revenue account pay to the Government interest on that amount at such rate as may be so agreed or determined, and also make payments in reduction of the principal of that amount in accordance with any repayment scheme so agreed or determined.

For the purposes of this subsection, where the Secretary of State in Council has assumed or incurred any obligation in connection with railways in Burma, [illegible] for the said purposes an amount equal to [illegible] shown in the accounts of the Government [illegible] nencement of this Part of this Act.

Nothing in this subsection shall be construed as preventing the Board from making payments to the Government of Burma in reduction of the principal of any such amount as aforesaid out of moneys other than receipts on revenue account.

(2) It shall be an obligation to the Board to repay to the Government any sums defrayed out of the revenues of Burma in respect of any debt, damages, costs or expenses in or in connection with any proceedings brought or continued by or against the Government of Burma or against the Secretary of State under chapter X of this Part of this Act in respect of railways in Burma.

(3) It sh[illegible]ll be an obligation of the Board to pay to the Government such [illegible] ermined by the Governor [illegible] of the expenses incurred [illegible] ed for the maintenance of order on the premises of railways operated by the Board.

Investment of funds of Railway Board.

394. Subject to such conditions, if any, as may be prescribed by the Government, the Board may from time to time invest any moneys in the railway fund or a provident fund which are not for the time being required to meet expenses properly defrayable out of that fund and may, subject as aforesaid, from time to time transfer and realise investments so made by it.

Special provisions as to certain existing funds.

395. (1) There shall be deemed to be owing by the Government of Burma to the Board such sum as may be declared by His Majesty in Council to represent the amount of the existing railway funds attibutable to the railways in Burma, but no sum shall be paid by the Government of Burma to the Board in respect of the money so deemed to be owing except in respect of expenses of the Board which could if this Act had not been passed have properly been met out of the said funds respectively.

(2) The Government of Burma shall credit the Board with interest on the amount from time to time deemed to be owing under subsection (1) of this section at such rate as may from time to time be agreed between the Government and the Board or as may, in default of agreement, be *from time to time deter-*

mined by the Governor in his discretion, and any interest so credited shall be treated as an addition to the sum deemed to be owing under the said subsection.

(3) In this section "the existing railway funds" means the funds known respectively as the railway provident fund, the railway reserve fund and the railway depreciation fund which immediately before the commencement of this Part of this Act were held by, or were shown in the accounts of the Government of India as held by, the Governor-General in Council.

Audit and annual reports.

396. (1) The accounts of the receipts and expenditure of the Board shall be audited and certified by, or on behalf of the Auditor-General.

(2) The Board shall publish annually a report of its operations during the preceding year and a statement of accounts in a form approved by the Auditor-General.

Railway Rates Committee.

397. The Governor may from time to time appoint a Railway Rates Committee to advise the Board in connection with any dispute between the Board and persons using, or desiring to use, the railways operated by the Board as to rates or traffic facilities which he may require the Board to refer to the Committee

Bills and amendments for regulating rates and fares to require recommendation of Governor.

398. A Bill or amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either Chamber of the Legislature except on the recommendation of the Governor.

CHAPTER III.

THE HIGH COURT.

Constitution of High Court.

399. The High Court at Rangoon (in this Part of this Act called the High Court) shall continue, and shall be a court of record, and shall consist of a chief justice and such number of other judges as His Majesty may deem it necessary to appoint:

Provided that the judges so appointed, together with any additional judges appointed by the Governor in accordance with the following provisions of this chapter, shall at no time exceed in number such maximum number as His Majesty in Council may fix.

(2) Every judge of the High Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty years:

Provided that—

(a) a judge may by resignation under his hand addressed to the Governor resign his office;

(b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of the High Court unless he—

(a) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or

(b) is a member of the Indian Civil Service or the Burma Civil Service (Class I) of at least ten years' standing, who has for at least three years served as, or exercised the powers of, a district judge; or

(*c*) has for at least five years held judicial office in Burma not inferior to that of a district judge or judge of the small cause court of Rangoon ; or

(*d*) has for at least ten years been an advocate of the High Court :

Provided that a person shall not, unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or an advocate of the High Court, be qualified for appointment as chief justice of the High Court until he has served for not less than three years as a judge of the High Court.

In computing for the purpose of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been an advocate, any period during which he has held judicial office after he became a barrister, a member of the Faculty of Advocates or an advocate, as the case may be, shall be included.

(4) Every person appointed to be a judge of the High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the Fourteenth Schedule to this Act.

Salaries, &c. of judges.

400. The judges of the High Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave of absence and pensions, as may from time to time be fixed by His Majesty in Council :

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment.

Temporary and additional judges.

401. (1) If the office of chief justice of the High Court becomes vacant or if the chief justice is by reason of absence, or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the chief justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor may in his discretion think fit to appoint for the purpose.

(2) If the office of any other judge of the High Court becomes vacant, or if any such judge is appointed to act temporarily as chief justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor may in his discretion appoint a person duly qualified for appointment as a judge to act as a judge of the court, and the person so appointed shall, uuless the Governor in his [illegible] deemed to be a judge of the co[illegible] to the vacant office has ent[illegible] judge has resumed his duties.

(3) If, by reason of any temporary increase in the business of the High Court or by reason of arrears of work in that Court, it appears to the Governor that the number of the judges of the Court should be for the time being increased, the Governor in his discretion may, subject to the foregoing provisions of this Chap-[illegible] appoint persons duly quali-[illegible] judges of the Court for such [illegible]

Jurisdiction of High Court.

402. Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the Legislature, the jurisdiction of, and the law administered in, the High Court and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court, and to regulate the sittings of the court and of members thereof sitting in division

courts, shall be the same as immediately before the commencement of this Part of this Act.

Administrative functions of High Court.

403. (1) The High Court has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say :—

(*a*) calls for returns ;

(*b*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;

(*c*) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and

(*d*) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to the High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

Jurisdiction in revenue matters.

404. (1) Until otherwise provided by Act of the Legislature, the High Court shall not have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage or practice of the country, or the law for the time being in force.

(2) A Bill or amendment for making such provision as aforesaid shall not be introduced or moved in either Chamber of the Legislature without the previous sanction of the Governor in his discretion.

Additional appeal to His Majesty as respects interpretation of this Act.

405. (1) In addition to any other right of appeal, there shall, subject to the provisions of section twenty of the Judicial Committee Act, 1833* (which relates to the time for appealing), be a right of appeal to His Majesty in Council from any decision of the High Court on the ground that a question of law with respect to the interpretation of this Part of this Act, or any Order in Council made thereunder, has been wrongly decided.

(2) Nothing in this Part of this Act shall be construed as authorising the Legislature to derogate from any prerogative right of His Majesty to grant special leave to appeal in any case.

Proceedings in High Court to be in English.

406. All proceedings in the High Court shall be in the English language.

Expenses of High Court.

407. (1) The administrative expenses of the High Court, including all salaries, allowances and pensions payable to or in respect of judges, officers and servants of the Court, shall be charged upon the revenues of Burma, and any fees or other moneys taken by the Court shall form part of those revenues.

(2) The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of [illegible] to, or in [illegible] ncement of this Part of this Act chargeable upon the revenues of Burma.

* [illegible] Will. [illegible]

408. Any judge appointed before the commencement of this Part of this Act to the High Court shall continue in office and shall be deemed to have been appointed under this chapter, but shall not by virtue of this Act be required to relinquish his office at an earlier age than he would have been required so to do if this Act had not been passed.

Saving.

CHAPTER IX.

THE SERVICES OF THE CROWN IN BURMA.

Defence Services.

409. (1) His Majesty in Council may require that appointments to such offices connected with defence as he may specify shall be made by him, or in such manner as he may direct.

Control of His Majesty as to defence appointments.

(2) Nothing in this section derogates from any power vested in His Majesty by virtue of any Act, or by virtue of his Royal Prerogative.

410. The power of His Majesty, and of any person authorised in that behalf by His Majesty, to grant commissions in any naval, military or air forces raised in Burma extends to the granting of a commission in any such force to any person who might be, or has been, lawfully enlisted or enrolled in that force.

Eligibility for commissions in Burman forces.

411. Without prejudice to the generality of the powers conferred on him by this Part of this Act, the Secretary of State, acting with the concurrence of his advisers, may from time to time specify what rules, regulations and orders affecting the conditions of service of all or any of His Majesty's forces in Burma shall be made only with his previous approval.

Control of Secretary of State with respect to conditions of service.

412. Nothing in this Part of this Act affects any right of appeal which members of His Majesty's forces in Burma enjoyed immediately before the passing of this Act, and the Secretary of State may entertain any such memorial from a member of those forces as the Secretary of State, or the Secretary of State in Council, might previously have entertained.

Saving of rights of appeal.

413. Any sums payable out of the revenues of Burma in respect of pay, allowances, pensions or other sums payable to, or in respect of, persons who are serving, or have served, in His Majesty's forces shall be charged on those revenues, but nothing herein contained shall be construed as limiting the interpretation of the general provisions of this Part of this Act charging on the said revenues expenditure with respect to defence.

Pay, &c. of members of forces to be charged on revenues of Burma.

414 The provisions of the three last preceding sections shall apply in relation to persons who, not being members of His Majesty's forces, hold, or have held, posts in Burma connected with the equipment or administration of those forces or otherwise connected with defence, as they apply in relation to persons who are, or have been, members of those forces.

Provision as to certain civilian personnel

General Provisions as to Civil Services.

415. (1) Except as expressly provided by this Part of this Act, every person who is a member of a civil service of the Crown in Burma or holds any civil post u[illegible] the Crown in Burma, holds office during [illegible] Majesty's pleasure.

Tenure of office of persons employed in civil capacities in Burma.



(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this subsection shall not apply—

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on :

(b) where an authority empowered t
rank is satisfied that for some reason, to be :
it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post under the Crown in Burma holds office during His Majesty's pleasure, any contract under which a person not being a member of a ci
ted under this Act to hold such a
in order to secure the services of
for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Recruitment and conditions of service.

416. (1) Except as expressly provided by this Part of this Act, appointments to the civil services of, and civil posts under the Crown in Burma, shall, after the commencement of this Part of this Act, be made by the Governor or such person as he may direct.

(2) Except as expressly provided by this Part of this Act, the conditions of service of persons serving His Majesty in

rules regulating the conditions of service of persons appointed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this subsection shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for regulation by rule in the case of that class.

(3) The said rules shall be so framed as to secure—

(a) that, in the case of a person who before the commencement of this Part of this Act was serving His Majesty in a civil capacity in India or Burma, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority in Burma which would have been competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect;

(b) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—

(i) punishes or formally censures him; or

(ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated; or

(iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation,

as he would have had immediately before the commencement of this Part of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State, or by some person empowered by the Secretary of State to give directions in that respect:

(c) that every other person serving His Majesty in a civil capacity in Burma shall have at least one appeal against any such order as aforesaid, not being an order of the Governor.

(4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the Legislature may regulate the conditions of service of persons serving His Majesty in a civil capacity in Burma and any rules made under this section shall have effect subject to the provisions of any such Act:

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding subsection.

(5) No rules made under this section and no Act of the Legislature shall be construed to limit or abridge the power of the Governor to deal with the case of any person serving His Majesty in a civil capacity in Burma in such manner as may appear to him to be just and equitable:

Provided that, where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act.

Application of preceding section to railway services and officials of High Court.

417. (1) In its application to appointments to, and to persons serving in, the railway services, the last preceding section shall have effect as if for any reference to the Governor in subsections (1), (2) and (5) there were substituted a reference to the Railway Board.

(2) In framing rules for the regulation of recruitment to superior railway posts, the Railway Board shall consult the Public Service Commission, but, save as aforesaid, it shall not be obligatory on the Board to consult with, or otherwise avail themselves of the services of, the Commission.

(3) In its application to appointments to, and to persons serving on, the staff attached to the High Court, the said section shall have effect as if for any reference to the Governor in subsections (1), (2) and (5) there were substituted a reference to the chief justice:

Provided that—

(a) the Governor may in his discretion require that in such cases as he may in his discretion direct no person not already attached to the Court shall be appointed to any office connected with the court save after consultation with the Public Service Commission;

(b) rules made under the said subsection (2) by the chief justice shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor.

Special Provisions as to police.

418. Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the Police forces shall be such as may be determined by or under the Acts relating to those forces respectively.

Recruitment by Secretary of State and provisions as to certain civil posts.

Services recruited by the Secretary of State.

419. (1) There shall be civil services in Burma corresponding to the Indian Civil Service and the Indian Police Service, which shall be known respectively as the Burma Civil Service (Class 1) and the Burma Police (Class 1), and appointment to those services shall, until Parliament otherwise determines, be made by the Secretary of State.

(2) Until Parliament otherwise determines, the Secretary of State may also make appointments to any service or services which at any time he may deem it necessary to establish in Burma for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor which the Governor is by or under this Act required to exercise in his discretion.

(3) The respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein.

(4) It shall be the duty of the Governor to keep the Secretary of State informed as to the operation of this and the next succeeding section, and he may after the expiration of such period as he thinks fit make recommendations for the modification thereof.

In discharging his functions under this subsection, the Governor shall act in his discretion.

Power of Secretary of State to make medical appointments in Burma.

420. Until Parliament otherwise determines, the Secretary of State may appoint persons to any civil medical service of, or civil medical post under, the Crown in Burma.

Special provision as to irrigation.

421. Until Parliament otherwise datermines, the Secretary of State may for the purpose of securing efficiency in irrigation or the prevention of flooding, appoint persons to any civil service of, or civil post under the Crown in Burma concerned with those matters.

Reserved posts.

422. (1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor which the Governor is by or under this Act required to exercise in his discretion), which, subject to the provisions of this subsection, are to be filled by persons appointed by the Secretary of State to a civil service of, or a civil post under, the Crown in Burma, and except under such conditions as may be prescribed in the rules no such post shall, without the previous sanction of the Secretary of State—

(a) be kept vacant for more than three months ; or

(b) be filled otherwise than by the appointment of such a person as aforesaid ; or

(c) be held jointly with any other such post.

(2) Appointments and postings to the said posts (hereafter in this chapter referred to as "reserved posts") shall be made by the Governor, exercising his individual judgment.

(3) All rules made under this section shall, so soon as may be after they are made, be laid before each House of Parliament, and if either House of Parliament within the next subsequent twenty eight days on which that House has sat after any such rule has been laid before it resolves that the rule shall be annulled, the rule shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of a new rule.

Conditions of service, pensions, &c. of persons recruited by Secretary of State.

423. (1) The conditions of service of all persons appointed to a civil service or a civil post in Burma by the Secretary of State—

(a) as respects pay, leave and pensions and general rights in regard to medical attendance, be such as may be prescribed by rules to be made by the Secretary of State ;

(b) as respects other matters with respect to which express provision is not made by this chapter, be such as may be prescribed by rules to be made by the Secretary of State, in so far as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made by the Governor or some person authorised by the Governor to make rules for the purpose :

Provided that no rule made under this subsection shall have effect so as to give to any person appointed to a civil service or civil post by the Secretary of State less favourable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post

(2) Any promotion of any person appointed to a civil service or a civil post by the Secretary of State or any order relating to leave of not less than three months of any such person, or any order suspending any such person from office, shall be made by the Governor, exercising his individual judgment.

(3) If any such person as aforesaid is suspended from office, his, remuneration shall not, during the period of his suspension, be reduced except to such extent, if any, as may be directed by the Governor, exercising his individual judgment.

(4) Any salary, allowances or pension payable to, or in respect of any such person as aforesaid, and Government contributions in respect of any such person as aforesaid to any pension fund or provident fund, shall be charged on the revenues of Burma :

Provided that, if any such person is serving in connection with the railways in Burma, so much only of his salary and allowances shall be charged on the revenues of Burma as is not paid out of the Railway Fund.

(5) No award of a pension less than the maximum pension allowable under rules made under this section shall be made, except in each case with the consent of the Secretary of State.

(6) No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in a civil capacity in Burma in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power of the Governor to deal with the case of any such person in such manner as may appear to him to be just and equitable .

Provided that, where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule.

Rights in respect of complaints, appeals, &c.

424. (1) If any person appointed to a civil service or a civil post by the Secretary of State is aggrieved by an order made by any authority in Burma affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain to the Governor, and the Governor shall examine into the complaint and cause such action to be taken thereon as appears to him exercising his individual judgment to be just and equitable

(2) No order made by any authority in Burma which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of pension, or decides adversely to him the subject-matter of any memorial, shall be made except by the Governor, exercising his individual judgment

[illegible] a civil post by the Secretary of [illegible] any order made by any autho- [illegible] es him, or alters or interprets to his disadvantage any rule by which his conditions of service are regulated.

(4) Any sums ordered to be paid out of the revenues of Burma to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues.

Compensation.

425. (1) If by reason of anything done under this chapter the conditions of service of any person appointed to a civil service or a civil post in Burma by the Secretary

(3) The respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein.

(4) It shall be the duty of the Governor to keep the Secretary of State informed as to the operation of this and the next succeeding section, and he may after the expiration of such period as he thinks fit make recommendations for the modification thereof.

In discharging his functions under this subsection, the Governor shall act in his discretion.

Power of Secretary of State to make medical appointments in Burma.

420. Until Parliament otherwise determines, the Secretary of State may appoint persons to any civil medical service of, or civil medical post under, the Crown in Burma.

Special provision as to irrigation.

421. Until Parliament otherwise determines, the Secretary of State may for the purpose of securing efficiency in irrigation or the prevention of flooding, appoint persons to any civil service of, or civil post under the Crown in Burma concerned with those matters.

Reserved posts.

422. (1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor which the Governor is by or under this Act required to exercise in his discretion), which, subject to the provisions of this subsection, are to be filled by persons appointed by the Secretary of State to a civil service of, or a civil post under, the Crown in Burma, and except under such conditions as may be prescribed in the rules no such post shall, without the previous sanction of the Secretary of State—

(*a*) be kept vacant for more than three months; or

(*b*) be filled otherwise than by the appointment of such a person as aforesaid; or

(*c*) be held jointly with any other such post.

(2) Appointments and postings to the said posts (hereafter in this chapter referred to as "reserved posts") shall be made by the Governor, exercising his individual judgment.

(3) All rules made under this section shall, so soon as may be after they are made, be laid before each House of Parliament, and if either House of Parliament within the next subsequent twenty eight days on which that House has sat after any such rule has been laid before it resolves that the rule shall be annulled, the rule shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of a new rule.

Conditions of service, pensions, &c., of persons recruited by Secretary of State.

...vice of all ... a civil

(*a*) as respects pay, leave and pensions and general rights in regard to medical attendance, be such as may be prescribed by rules to be made by the Secretary of State;

(*b*) as respects other matters with respect to which express provision is not made by this chapter, be such as may be prescribed by rules to be made by the Secretary of State, in so far as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made by the Governor or some person authorised by the Governor to make rules for the purpose:

Provided that no rule made under this subsection shall have effect so as to give to any person appointed to a civil service or civil post by the Secretary of State less favourable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post

(2) Any promotion of any person appointed to a civil service or a civil post [illegible] ss than three [illegible] from office, [illegible]

(3) [illegible] s, remuneration shall not, during the period of his suspension, be reduced except to such extent, if any, as may be directed by the Governor, exercising his individual judgment.

(4) Any salary, allowances or pension payable to, or in respect of any such person as aforesaid, and Government contributions in respect of any such person as aforesaid to any pension fund or provident fund, shall be charged on the [illegible] serving in connection with the railways [illegible] and allowances shall be charged on the [illegible] of the Railway Fund.

(5) No award of a pension less than the maximum pension allowable under rules made under this section shall be made, except in each case with the consent of the Secretary of State.

(6) No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in a civil capacity in Burma in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power of the Governor to deal with the case of any such person in such manner as may appear to him to be just and equitable.

Provided that, where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule.

Rights in respect of complaints, appeals, &c.

424. (1) If any person appointed to a civil service or a civil post by the Secretary of State is aggrieved by an order made by any authority in Burma affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain to the Governor, and the Governor shall examine into the complaint and cause such action to be taken thereon as appears to him exercising his individual judgment to be just and equitable.

(2) No order made by any authority in Burma which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of pension, or decides adversely to him the subject-matter of any memorial, shall be made except by the Governor, exercising his individual [illegible] a civil post by the Secretary of [illegible] any order made by any authority in Burma [illegible] s him, or alters or interprets [illegible] conditions of service are regulated. [illegible] of the revenues of Burma to or in res[illegible] appeal made under this section shall be charged on those revenues.

Compensation.

425. (1) If by reason of anything done under this chapter the conditions of service of any person appointed to a civil service or a civil post in Burma by the Secretary

of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of Burma such compensation as the Secretary of State may consider just and equitable.

(2) Any sum payable under this section from the revenues of Burma shall be charged on those revenues

(3) For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor from the revenues of Burma by way of compensation to persons who are serving or have served His Majesty in Burma in cases to which those provisions do not apply.

Provision as to persons appointed by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employment.

Application of four last preceding sections to persons appointed by Secretary of State in Council, and certain other persons.

426. (1) Subject to the provisions of this section, the provisions of the four last preceding sections and any rules made thereunder shall apply in relation to any person who was appointed before the commencement of this Part of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in Burma as they apply in relation to persons appointed to a civil service or civil post by the Secretary of State.

(2) Subject to the provisions of this section, the said sections and rules shall, in such cases and with such exceptions and modifications as the Secretary of State may decide, also apply to any person who—

(*a*) not being a person appointed as aforesaid by the Secretary of State or the Secretary of State in Council, holds or has held a reserved post ; or

(*b*) holds or has held any civil post under the Crown in Burma and is, or was when he was first appointed to such a post or to a civil post under the Crown in India, an officer in His Majesty's forces.

(3) In relation to any person who was appointed before the commencement of this Part of this Act to a civil service of, or to a civil post under, the Crown in Burma, the provision contained in the sections aforesaid that no rule as to conditions of service shall have effect so as to give to any person less favourable terms as reg

rules in force

less favourable terms as respects the said

...e rules in force immediately before the coming into operation of the rule.

(4) In its application by virtue of this section to persons serving in the railway services of Burma, the second of the four last preceding sections (which relates to the conditions of service, pensions, etc, of persons recruited by the Secretary of State) shall have effect as if for any reference to the Governor in paragraph (*b*) of subsection (1) thereof and in subsections (2), (3) and (6) thereof there were substituted a referance to the Railway Board.

(5) Any liability of the Government of the Burma to or in respect of any person appointed before the commencement of this Part of this Act to a civil service of, or a civil post under, the Crown in Burma, being a liability to pay a pension granted to or in respect of any such person as aforesaid or any other

orceable in legal proceedings

Act had not been passed, shall

be deemed, for the purposes

Act relating to legal proceed-

ssed before the commencement

(6) Nothing in this section shall be construed as charging on the revenues of Burma any pensions payable to or in respect of any person to whom this section applies who retired from the service of His Majesty before the commencement of this Part of this Act.

Special Provisions as to Judicial Officers.

Judges of the High Court.

427. (1) The foregoing provisions of this chapter shall not apply to the judges of the High Court:

Provided that—

(*a*) for the purposes of this section a member of any of the civil services of the Crown in Burma who is acting temporarily as a judge of the High Court shall not be deemed to be a judge of that court;

(*b*) *nothing in this section shall be construed as preventing the Orders* in Council relating to the salaries, leave and pensions of judges of the High Court from applying to such of those judges as were, before they were appointed judges, members of a civil service of the Crown in Burma or India, such of

service in Burma as may

lation to them.

ma to or in respect of any person who is at the commencement of this Part of this Act a judge of the High Court, being a liability to pay a pension granted to or in respect of any such person as aforesaid, or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall, notwithstanding anything in this Part of this Act, be deemed, for the purposes of the provisions of chapter x of this Part of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of this Part of this Act

District judges, &c.

428. (1) Appointments of persons to be, and the posting and promotion of, district judges in Burma shall be made by the Governor, exercising his individual judgment, and the High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.

(2) A person not already in the service of His Majesty shall only be eligible to be appointed a district judge if he has been for not less than five years a barrister, a member of the Faculty of Advocates, or an advocate and is recommended by the High Court for appointment.

(3) In this and the next succeeding section the expression "district judge" includes district and sessions judge, sessions judge, chief judge of the small cause court, Rangoon, additional district and sessions judge, additional district judge and additional sessions judge.

Subordinate civil judicial service.

429. (1) The Governor shall, after consultation with the Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering a subordinate civil judicial service.

In this section the expression "subordinate civil judicial service" means a service consisting of persons intended to fill civil judicial posts in Burma subordinate to that of district judge

(2) The Public Service Commission, after holding such examinations, if any, as the Governor may think necessary, shall from time to time out of the

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(3) The posting and promotion of, and the grant of leave to, belonging to a subordinate civil judicial service and holding any post

to the post of district judge, shall be in the hands of the High Court, but nothing in this section shall be construed as taking away from any such person the right of appeal required to be given to him by the foregoing provisions of this chapter, or as authorising the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder.

In this subsection the expression "promotion" does not include promotion from one service to another.

Subordinate criminal magistracy.

430. No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to, or the withdrawal of any magisterial powers from, any person save after consultation with the district magistrate of the district in which he is working.

Special Provisions as to Burma Frontier Service.

Burma Frontier Service.

431. (1) Appointments to the Burma Frontier Service shall be made by the Governor in his discretion, and in relation to persons who are or have been members of that service the powers of the Governor under this chapter shall be exercised by him in his discretion.

(2) Except so far as the Governor in his discretion otherwise directs, no Act of the Legislature for regulating the conditions of service of persons serving His Majesty in a civil capacity in Burma shall apply in relation to persons who are members of the Burma Frontier Service.

(3) Any salaries, allowances or pensions [illegible] sons who are or have been members of th[illegible] Government contributions in respect of any s[illegible] provident fund, shall be charged on the revenues of Burma.

Provisions for the protection of certain existing officers.

Provision for protection of existing officers of certain services.

432. (1) No civil post in Burma which, immediately before the commencement of this Part of this Act, was a post in, or a post required to be held by some member of, a Central Service Class I, a Central Service Class II, a Railway Service Class I, a Railway Service Class II, or a Provincial Service, shall, if the abolition thereof would adversely affect any person who immediately before the said date was a member of any such service, be abolished, except by the Governor, exercising his individual judgment.

(2) No rule or order affecting adversely the pay, allowances or pensions payable to, or in respect of, a person appointed before the commencement of this Part of this Act to a Central Service Class I, a Railway Service Class I or a Provincial Service, and no order upon a memorial submitted by any such person, shall be made except by the Governor, exercising his individual judgment.

(3) In relation to any person mentioned in this section who was appointed to a civil service of, or civil post under, the Crown in Burma by the Secretary of State or the Secretary of State in Council, or is an officer in His Majesty's forces, the foregoing provisions of this section shall have effect as if for the reference to the Governor there was substituted a reference to the Secretary of State.

Provisions as to certain persons serving in or before 1924

433. (1) The salary and allowances of any person who was appointed before the first day of April, nineteen hundred and twenty-four, otherwise than by the Secretary of State in Council, to a service or a post which at any time between that date and the commencement of this Part of this

Act was classified as a superior service or post shall be charged on the revenues of Burma :

Provided that, if any such *person as aforesaid is serving in connection with* the railways in Burma, so much only of his salary and allowances shall be charged on the revenues of Burma as is not paid out of the Railway Fund.

(2) Any pension payable to or in respect of any such person as aforesaid, and any government contributions to any provident fund or pensions fund in respect of any such person, shall be charged on the revenues of Burma

(3) Nothing in this section shall be construed as charging on the revenues of Burma any pension payable to or in respect of any person who retired from the service of His Majesty before the commencement of this Part of this Act.

General provisions as to persons retiring before commencement of this Part of this Act.

434. (1) Any pension payable to or in respect of any person who, having been appointed to a civil service of, or a civil post under, the Crown in Burma, retired from the service of His Majesty before the coming into operation of this Act shall be paid out of the revenues of Burma, if it would have been payable by t [illegible] : [illegible] ision which is cha [illegible] a.

(2) There shall be paid to the Federation out of the revenues of Burma and charged on those revenues such sums as may be required to make good to the revenues of the Federation any liability in respect of any pension charged on or payable out of the revenues of the Federation which would, if this Act had not been passed, have been a liability of the Local Government of Burma.

Miscellaneous provisions as to civil services.

Application to members of Indian services serving in Burma.

435. In this chapter references to persons appointed to a civil service of the Crown in Burma include references to persons appointed before the commencement of this Part of this Act to a civil service of the Crown in India who were, before that date, serving in Burma and continue so to serve, and the requirement that no person shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed shall, in relation to any such person appointed by any authority in India, be construed as a requirement that he shall not be so dismissed by any authority subordinate to such authority in Burma as the Governor may, in his discretion, decide to correspond to the authority by which he was appointed.

Secretary of State to act with concurrence of his advisers.

436. The powers conferred by the provisions of this chapter on the Secretary of State (other than powers in relation to defence services) shall not be exercisable by him except with the concurrence of his advisers and the advisers of the Secretary of State appointed under the *provisions of* this Act relating to India.

Public Service Commission.

Composition, staff and expenses of Public Service Commission.

437. (1) There shall be a Public Service Commission, the chairman and other members whereof shall be appointed by the Governor in his discretion :

Provided that at least one-half of the members of the Public Service Commission shall be persons who, at the dates of their respective appointments, have held office for at least ten years under the Crown in Burma or India.

(2) The Governor in his discretion may by regulations—

(*a*) determine the number of members of the Commission, their te office, and their conditions of service ;

(*b*) make provision with respect to the numbers of staff of the commission and their conditions of service.

(3) On ceasing to hold office—

(*a*) the chairman of the Commission shall be ineligible for further employment under the Crown in Burma;

(*b*) no other member of the Commission shall be eligible for any other appointment under the Crown in Burma without the approval of the Governor in his discretion.

(4) The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of Burma.

Functions of Public Service Commission.

438. (1) It shall be the duty of the Public Service Commission to conduct examinations for appointments to civil services

(2) The Secretary of State, as respects services and posts to which appointments are made by him, and the Governor in his discretion as respects other services and posts, may make regulations specifying the matters on which either generally, or in any particular class of case, or in any particular circumstances, it shall not be necessary for the Public Service Commission to be consulted, but, subject to regulations so made, the Commission shall be consulted—

(*a*) on all matters relating to methods of recruitment to civil services and and for civil posts;

(*b*) on [illegible]
services and [illegible]
another, and [illegible]
or transfers,

(*c*) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in Burma, including memorials or petitions relating to such matters;

(*d*) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of Burma;

(*e*) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in Burma, and any question as to the amount of any such award;

(*f*) on any claim by a person serving His Majesty in a civil capacity in Burma that his conditions of service have been adversely affected by the separation of Burma from India,

and it shall be the duty of the Commission to advise on any matter so referred to them and on any other matter which the Governor in his discretion may refer to them.

(3) Nothing in this section shall require the Public Service Commission to be consulted, in the case of the subordinate ranks of the various police forces in Burma, as respects any of the matters mentioned in paragraphs (*a*), (*b*) and (*c*) of subsection (2) of this section.

Power to extend functions of Public Service Commission.

439. Subject to the provisions of this section, an Act of the Legislature may provide for the exercise of additional functions by the Public Service Commission:

Provided that—

(*a*) no Bill or amendment for the purpose aforesaid shall be introduced or moved in their Chamber of the Legislature without the previous sanction of the Governor in his discretion; and

(*b*) it shall be a term of every such Act that the functions conferred by it shall not, except with the consent of the Secretary of State, be exercisable in relation to any person appointed to a service or a post by the Secretary of State or by the Secretary of State in Council, any officer in His Majesty's Forces or any holder of a reserved post.

Chaplains.

Provisions as to chaplains.

440 The Secretary of State may appoint chaplains to minister in Burma, and the foregoing provisions of this Part of this Act shall, with any necessary modifications, apply in relation to the chaplains in Burma appointed by him or by the Secretary of State in Council as they apply in relation to members of the civil services in Burma to which appointments are made by the Secretary of State.

General.

Eligibility for office under the Crown in Burma of persons *who are not British subjects*

141. Subject to any express provision of this Act, no person who is not a British subject shall be eligible to hold any office under the Crown in Burma:

Provided that the Governor, exercising his individual judgment may—

Burma (not being part
erritory adjacent to India
tion with the affairs of
Burma, being an office specified in the declaration;

(*b*) authorise the temporary employment for any purpose of a person who is not a British subject.

Indemnity for past acts.

442. (1) No proceedings civil or criminal shall be instituted in Burma against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the commencement of this Part of this Act, except with the consent of the Governor in his discretion.

(2) Any civil or criminal proceedings institu'ed in Burma, whether before or after the commencement of this Part of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the said date shall be dis-
in
by
tu-

Protection of public servants against prosecutions and suits in Burma.

443. (1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in Burma by section one hundred and ninety-seven of the Indian Code of Criminal Procedure, or by sections eighty to eighty-two of the Indian Code of Civil Procedure shall be introduced or moved in either Chamber of the Legislature without the previous sanction of the Governor in his discretion.

(2) The powers conferred upon the Local Government by the said section one hundred and ninety seven with respect to the sanctioning of prosecutions and the determination of the court before which, the person by whom and the manner in which a public servant is to be tried, shall be exercisable only by the Governor exercising his individual judgment:

Provided that nothing in this subsection shall be ... icting the power of the Legislature to amend the said section by

introduced or moved with such previous sanction as is mentioned in subsection (1) of this section.

(3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor, exercising his individual judgment, so directs, be defrayed out of and charged on the revenues of Burma.

Provisions as to payment of certain pensions, and exemption of those pensions from taxation in Burma.

444. Any pension payable to or in respect of a person who—

(a) before the commencement of this Part of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor General in Council; or

(b) after the commencement of this Part of this Act—

(i) serves in Burma as an officer of His Majesty's forces; or

(ii) is appointed to a civil service of, or to an office or post under, the Crown in Burma by His Majesty or the Secretary of State; or

(iii) holds a reserved post;

shall, if the person to whom the pension is payable is residing permanently outside Burma, be paid on behalf of the Government of Burma by, or in accordance with arrangements made with, the Secretary of State and be exempt from all taxation imposed by or under any existing Indian or Burman law or any law of the Legislature.

Persons not to be disqualified by sex for holding certain offices in Burma.

445. A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in Burma other than such a service or post as may be specified by any general or special order made by the Secretary of State in relation to appointments made by him, or by the Governor in relation to other appointments.

Transitional provisions.

446. Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the civil services of, or civil post under, the Crown in India which were in force immediately before the commencement of this Part of this Act, shall, notwithstanding the repeal of that Act, continue in force in Burma so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of his Act.

Interpretation, &c.

447. (1) In this chapter—

the expressions "Central Service Class I," "Central Service Class II", "Railway Service Class I," "Railway Service Class II" and "Provincial Service" mean respectively the services which were, immediately before the passing of this Act, so described respectively in the classification rules then in force under section ninety six B of the Government of India Act;

references to dismissal from His Majesty's service include references to removal from His Majesty's service.

[illegible] ...ing the [illegible]

the safeguarding of their legitimate interests.

CHAPTER X.

PROPERTY, CONTRACTS, LIABILITIES AND SUITS.

Provisions as to existing Government property.

448. (1) Lands and buildings in Burma which immediately before the commencement of this Part of this Act were vested in His Majesty for the purposes of the Government of India shall, as from that date, vest in His Majesty for the purposes of the Government of Burma.

(2) Any property which immediately before the commencement of this Part of this Act was vested in His Majesty for the purposes of the government of India and either was then situate in Burma or, by virtue of any delegation from the Secretary of State in Council or otherwise, was then in the possession or under the control of, or held on account of, the Local Government of Burma, shall, as from the commencement of this Part of this Act, vest in His Majesty for the purposes of the government of Burma:

Provided that this subsection does not apply in relation to any military equipment, stores, money, bank balances or other property held in connection with His Majesty's Indian forces stationed in Burma (not being forces raised in Burma).

(3) All credits and debits of the Local Government of Burma in account with the Governor-General of India in Council shall be deemed to be credits and debits of the government of Burma.

(4) Arrears of any taxes outstanding in Burma immediately before the commencement of this Part of this Act shall be deemed to be due to and may be recovered by the government of Burma.

(5) In this section "property" does not include any land or buildings, but includes moneys, securities, bank balances, and movable property of any description.

Power to acquire property and to make contracts, &c.

449. (1) The executive authority of Burma shall extend, subject to any Act of the Legislature, to the grant, sale, disposition or mortgage of any property vested in His Majesty for the purposes of the government of Burma and to the purchase or acquisition of property on behalf of His Majesty for those purposes, and to the making of contracts:

Provided that an official residence of the Governor shall not be sold or diverted to other use, except with the concurrence of the Governor in his discretion.

(2) All property acquired for the purposes of the government of Burma shall vest in His Majesty for those purposes.

(3) Subject to the provisions of this Part of this Act with respect to the Railway Board, all contracts made in the exercise of the executive authority of Burma shall be expressed to be made by the Governor, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise.

(4) Neither the Governor nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Part of this Act, or for the purposes of the Government of India Act or of any Act repealed thereby, nor shall any person making or executing any such contract or assurance on behalf of either of them be personally liable in respect thereof.

Suits and proceedings.

450. (1) The Government of Burma may sue and be sued by the name of the Government of Burma, and, without prejudice to the provisions of the next section, may, subject to any provisions which may be made by Act of the lature, sue or be sued in relation to their affairs in the like cases as the

introduced or moved with such previous sanction as is mentioned in subsection (1) of this section.

(3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor, exercising his individual judgment, so directs, be defrayed out of and charged on the revenues of Burma.

Provisions as to payment of certain pensions, and exemption of those pensions from taxation in Burma.

444. Any pension payable to or in respect of a person who—

(*a*) before the commencement of this Part of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor General in Council; or

(*b*) after the commencement of this Part of this Act—

(i) serves in Burma as an officer of His Majesty's forces; or

(ii) is appointed to a civil service of, or to an office or post under, the Crown in Burma by His Majesty or the Secretary of State; or

(iii) holds a reserved post;

shall, if the person to whom the pension is payable is residing permanently outside Burma, be paid on behalf of the Government of Burma by, or in accordance with arrangements made with, the Secretary of State and be exempt from all taxation imposed by or under any existing Indian or Burman law or any law of the Legislature.

Persons not to be disqualified by sex for holding certain offices in Burma.

445. A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in Burma other than such a service or post as may be specified by any general or special order made by the Secretary of State in relation to appointments made by him, or by the Governor in relation to other appointments.

Transitional provisions.

446. Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the civil services of, or civil post under, the Crown in India which were in force immediately before the commencement of this Part of this Act, shall, notwithstanding the repeal of that Act, continue in force in Burma so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act.

Interpretation, &c.

447. (1) In this chapter—

the expressions "Central Service Class I," "Central Service Class II", "Railway Service Class I," "Railway Service Class II" and "Provincial Service" mean respectively the services which were, immediately before the passing of this Act, so described respectively in the classification rules then in force under section ninety six B of the Government of India Act;

references to dismissal from His Majesty's service include references to removal from His Majesty's service.

(2) The inclusion in this chapter of provisions expressly requiring the Governor to exercise his individual judgment with respect to any matter shall not be construed as derogating from his special responsibility for the securing to, and to the dependants of, persons who are or have been members of the public services of any rights, provided or preserved for them by or under this Act and the safeguarding of their legitimate interests.

453. What a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic interests of Burma during that period, His Majesty may by Order in Council give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma, and with respect to ancillary and related matters.

Provisions as to Customs duties on India—Burma Trade.

454. His Majesty in Council may make provision for the grant of relief from any Burman tax on income in respect of income taxed or taxable by or under the law of the Federation of India.

Relief in respect of tax on income taxable both in India and Burma.

455. His Majesty in Council may make such provision with respect to the monetary system of Burma and matters connected therewith or ancillary thereto as he thinks fit and in particular, but without prejudice to the generality of this section, such provision as may appear to him to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of this Part of this Act with the approval of the Secretary of State by the Governor of Burma in Council.

Provisions as to monetary system.

456. His Majesty may by Order in Council direct that, during such period as may be specified in the Order, immigration into Burma from India shall be subject to such restrictions as may be specified in the Order (being such restrictions as may have been mutually agreed before the commencement of this Part of this Act between the Governor of Burma in Council and the Governor-General of India in Council and approved by the Secretary of State, or in default of agreement as may have been prescribed by the Secretary of State), and no other restrictions :

Provisions as to immigration from India

Provided that any such Order may be varied by a subsequent Order in Council in such manner as appears to His Majesty necessary to give effect to any agreement in that behalf made after the commencement of this Part of this Act by the Governor with the Governor-General of India or the Governor-General of India in Council.

CHAPTER XII.

PROVISIONS IN EVENT OF FAILURE OF CONSTITUTIONAL MACHINERY.

457. (1) If at any time the Governor is satisfied that a situation has arisen in which the government of Burma cannot be carried on in accordance with the provisions of this Part of this Act, he may by Proclamation—

Power of Governor to issue proclamations.

(*a*) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion ;

(*b*) assume to himself all or any of the powers vested in or exercisable by any body or authority in Burma ;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable to give effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any body or authority in Burma :

Provided that nothing in this subsection shall authorise the Governor to assume to himself any of the powers vested in or exercisable by the High Court, or to suspend, either in whole or in part, the operation of any provisions of this Part of this Act relating to the High Court.

of State in Council might have sued or been sued if this Act had not been passed.

(2) Rules of court may provide that, where the Government of Burma or the Railway Board sue or are sued in the United Kingdom, service of all proceedings may be effected upon such person in the United Kingdom as may be designated in the rules as the person on whom service of such proceedings is to be effected.

Rights and liabilities of Secretary of State in Council.

451. (1) Any contract made before the commencement of this Part of this Act by, or on behalf of, the Secretary of State in Council shall as from that date, if it was made solely in connection with the affairs of Burma, have effect as if it had been made on behalf of the Government of Burma, and references in any such contract to the Secretary of State in Council shall be construed accordingly.

(2) Any proceedings relating to contracts or liabilities solely in connection with the affairs of Burma which, if this Act had not been passed, might have been brought against the Secretary of State in Council may, in the case of any liability arising before the commencement of this Part of this Act or arising under any contract or statute made or passed before that date, be brought against the Government of Burma, or, at the option of the person by whom the proceedings are brought, against the Secretary of State.

The provisions of this subsection shall apply with respect to proceedings arising under any contract declared by the terms thereof to be supplemental to any such contract as is mentioned therein as they apply in relation to the contracts so mentioned

(3) If at the commencement of this Part of this Act any legal proceedings ... which the Secretary of State ... be deemed to be substituted ... Council.

(4) Any contract made in respect of the affairs of Burma by or on behalf of the Secretary of State after the commencement of this Part of this Act may ... ntract shall be brought in the ... State, and any such proceedings

(5) Any sum ordered to be paid by way of debt, damages or costs, and any costs or expenses incurred in, or in connection with, any proceedings mentioned in this section by the Secretary of State, the Secretary of State in Council or the Government of Burm...

(6) Nothing in this ... the Exchequer of the ... or expenses in or in conn... or against the Secretary of State by virtue of this section, or as applying in relation to any liabilities which are by this Act made liabilities of the revenues of the Federation.

CHAPTER XI.

MISCELLANEOUS PROVISIONS AS TO RELATIONS WITH INDIA.

Financial settlement as between India and Burma

452. Whereas it may appear that the distribution of property and liabilities effected by this Act as between India and Burma may result in an undue burden on the revenues of the Federation, His Majesty in Council may, if he thinks it just so to do, make provision for the payment to the revenues of the Federation out of the revenues of Burma, and for the charging on the revenues of Burma, of such periodical or other sums as may appear to him to be proper.

453. What a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic interests of Burma during that period, His Majesty may by Order in Council give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma, and with respect to ancillary and related matters.

Provisions as to Customs duties on India—Burma Trade.

454. His Majesty in Council may make provision for the grant of relief from any Burman tax on income in respect of income taxed or taxable by or under the law of the Federation of India.

Relief in respect of tax on income taxable both in India and Burma.

455. His Majesty in Council may make such provision with respect to the monetary system of Burma and matters connected therewith or ancillary thereto as he thinks fit and in particular, but without prejudice to the generality of this section, such provision as may appear to him to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of this Part of this Act with the approval of the Secretary of State by the Governor of Burma in Council.

Provisions as to monetary system.

456. His Majesty may by Order in Council direct that, during such period as may be specified in the Order, immigration *into Burma from India shall be subject to such* restrictions as may be specified in the Order (being such restrictions as may have been mutually agreed before the commencement of this Part of this Act between the Governor of Burma in Council and the Governor-General of India in Council and approved by the Secretary of State, or in default of agreement as may have been prescribed by the Secretary of State), and no other restrictions :

Provisions as to immigration from India.

Provided that any such Order may be varied by a subsequent Order in Council in such manner as appears to His Majesty necessary to give effect to any agreement in that behalf made after the commencement of this Part of this Act by the Governor with the Governor-General of India or the Governor-General of India in Council.

CHAPTER XII.

Provisions in Event of Failure of Constitutional Machinery.

457. (1) If at any time the Governor is satisfied that a situation has arisen in which the government of Burma cannot be carried on in accordance with the provisions of this Part of this Act, he may by Proclamation—

Power of Governor to issue proclamations

(*a*) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion ;

(*b*) assume to himself all or any of the powers vested in or exercisable by any body or authority in Burma ;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable to give effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any body or authority in Burma :

Provided that nothing in this subsection shall authorise the Governor to assume to himself any of the powers vested in or exercisable by the High Court or to suspend, either in whole or in part, the operation of any provision of this Part of this Act relating to the High Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation under this section—

(*a*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament ;

(*b*) unless it is a proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months :

Provided that, if and so often as a resolution approving the continuance in force of such a proclamation is passed by both Houses of Parliament, the proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate, but no such proclamation shall in any case remain in force for more than three years.

(4) If the Governor, by a Proclamation under this section, assumes to himself any power of the Legislature te make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effects, unless sooner repealed or re-enacted by Act of the Legislature, and any reference in this Act to Acts of the Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion.

CHAPTER XIII.

Provisions as to Secretary of State.

Advisers to Secretary of State.

458. (1) There shall be not more than three persons, to be appointed from time to time by the Secretary of State, whose duty it shall be to advise the Secretary of State on any matter relating to Burma on which he may desire their advice.

(2) One at least of the persons for the time being holding office under this section [illegible] for at [illegible] form in [illegible] date of his appointment as an adviser under this section.

(3) Any person appointed as an adviser to the Secretary of State shall hold office for a term of five years and shall not be eligible for reappointment :

Provided that—

[illegible]

[illegible] either House of Parliament.

[illegible] ovided by Parliament to each [illegible] thirteen hundred and fifty pounds a year and also to any of them who at the date of his appointment was domiciled in Burma a subsistance allowance of six hundred pounds a year.

[illegible] inctions of the [illegible] shall be in the [illegible] his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provision [illegible] of State shall obtain [illegible] to be satisfied if at a [illegible]

at least one half of those present at the meeting, or if such notice and opportunity for objection as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion on the matter.

In this subsection "prescribed" means prescribed by rules of business made by the Secretary of State after obtaining at a meeting of advisers the concurrence of at least one-half of those present at the meeting.

Contributions from revenues of Burma to expenses of Secretary of State in certain circumstances.

459. (1) There shall be charged on and paid out of the revenues of Burma into the exchequer such periodical or other sums as may from time to time be agreed between the Governor and the Treasury in respect of so much of the expenses of the Department of the Secretary of State as is attributable to the performance on behalf of the Government of Burma of such functions as it may be agreed between the Secretary of State and the Governor that that department should so perform.

(2) Nothing in this Part of this Act shall be construed as imposing upon the revenues of Burma any liability in respect of the salary of the Secretary of State or, subject to the provisions of subsection (1) of this section, any liability in respect of the expenses of his department.

(3) Any expenses incurred with the consent of the Treasury by the Secretary of State for the purposes of this Part of this Act shall be defrayed out of moneys provided by Parliament.

CHAPTER XIV.

MISCELLANEOUS.

Power of His Majesty to delimit boundaries of Burma.

460. His Majesty in Council may from time to time declare any territory to be within or without Burma.

Provision as to pardon.

461. Nothing in this Part of this Act shall derogate from the right of His Majesty to grant pardons, reprieves, respites or remissions of punishment.

Persons not to be subjected to disability by reason of race, religion, &c.

462. (1) No subject of His Majesty domiciled in Burma shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in Burma, or be prohibited by any law of Burma on any such grounds [illegible] upation, [illegible] r mortgage of agricultural land situate in any particular area, and owned by a person belonging to some class recognised by the law as being a class of persons engaged in or connected with agriculture in that area, to any person not belonging to any such class; or

(b) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law.

(3) Nothing in this section shall be construed as derogating from the special responsibility of the Governor for the safeguarding of the legitimate interests of minorities.

Compulsory acquisition of land, &c.

463. (1) No person shall be deprived of his property in Burma save by authority of law.

(2) The Legislature shall not have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation under this section—

(*a*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(*b*) unless it is a proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a proclamation is passed by both Houses of Parliament, the proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate, but no such proclamation shall in any case remain in force for more than three years.

(4) If the Governor, by a Proclamation under this section, assumes to himself any power of the Legislature te make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effects, unless sooner repealed or re-enacted by Act of the Legislature, and any reference in this Act to Acts of the Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion.

CHAPTER XIII.

PROVISIONS AS TO SECRETARY OF STATE.

Advisers to Secretary of State.

458. (1) There shall be not more than three persons, to be appointed from time to time by the Secretary of State, whose duty it shall be to advise the Secretary of State or [illegible]

(2) [illegible]
section [illegible]
for at [illegible]
form in [illegible]
date of his appointment as an adviser under this section.

(3) Any person appointed as an adviser to the Secretary of State shall hold office for a term of five years and shall not be eligible for reappointment:

Provided that— [illegible]

[illegible]

either House of Parliament.
[illegible]ovided by Parliament to each [illegible]

pounds a year and also [illegible]
was domiciled in Burma [illegible]

(6) Subject to the provisions of this Act relating to the functions of the Secretary of State with respect to the public services in Burma, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provision of this Part of this Act which requires that the Secretary of State shall obtain the concurrence of any body of advisers shall be deemed to be satisfied if at a meeting of those advisers he obtains the concurrence of

at least one half of those present at the meeting, or if such notice and opportunity for objection as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion on the matter.

In this subsection "prescribed" means prescribed by rules of business made by the Secretary of State after obtaining at a meeting of advisers the concurrence of at least one-half of those present at the meeting.

Contributions from revenues of Burma to expenses of Secretary of State in certain circumstances.

459. (1) There shall be charged on and paid out of the revenues of Burma into the exchequer such periodical or other sums as may from time to time be agreed between the Governor and the Treasury in respect of so much of the expenses of the Department of the Secretary of State as is attributable to the performance on behalf of the Government of Burma of such functions as it may be agreed between the Secretary of State and the Governor that that department should so perform.

(2) Nothing in this Part of this Act shall be construed as imposing upon the revenues of Burma any liability in respect of the salary of the Secretary of State or, subject to the provisions of subsection (1) of this section, any liability in respect of the expenses of his department.

' with the consent of the Treasury by the -poses of this Part of this Act shall be defrayed ament.

CHAPTER XIV.

MISCELLANEOUS.

Power of His Majesty to delimit boundaries of Burma.

460. His Majesty in Council may from time to time declare any territory to be within or without Burma.

Provision as to pardon

461 Nothing in this Part of this Act shall derogate from the right of His Majesty to grant pardons, reprieves, respites or remissions of punishment.

Persons not to be subjected to disability by reason of race, religion, &c.

462. (1) No subject of His Majesty domiciled in Burma shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in Burma, or be prohibited by any law of Burma on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in Burma.

(2) Nothing in this section shall affect the operation of any law which—

(a) prohibits either absolutely or subject to exceptions, the sale or mortgage of agricultural land situate in any particular area, and owned by a person belonging to some class recognised by the law as being a class of persons engaged in or connected with agriculture in that area, to any person not belonging to any such class ; or

(b) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having

construed as derogating from the special safeguarding of the legitimate interests of minorities.

Compulsory acquisition of land, &c.

463. (1) No person shall be deprived of his property in Burma save by authority of law.

(2) The Legislature shall not have power to make any law authorising the compulsory acquisition for public purposes of any or any commercial or

industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking.

Protection for certain rights, privileges and pensions.

464. (1) The executive authority of Burma shall not be exercised, save on an order of the Governor in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title of or to land, or of or to any right or privilege in respect to land or land revenue, being a grant or confirmation made for services rendered.

(2) No pension granted or customarily payable in Burma before the commencement of this Part of this Act by the Governor-General in Council or the Local Government of Burma on political considerations or compassionate grounds shall be discontinued or reduced, otherwise than in accordance with any grant or order regulating the payment thereof, save on an order of the Governor, exercising his individual judgment, and any sum required for the payment of any such pension shall be charged on the revenues of Burma.

(3) Nothing in this section affects any remedy for a breach of any condition on which a grant was made.

Courts of appeal in revenue matters.

465. No member of the Legislature shall be a member of any tribunal having jurisdiction to entertain appeals or revise decisions in revenue cases.

Existing law to continue in force.

466. Notwithstanding the repeal of the Government of India Act but subject to the provisions of this Part of this Act, all the law in force in Burma immediately before the commencement of this Part of this Act shall continue in force in Burma until altered or repealed or amended by the Legislature or other competent authority.

Adaptation of existing laws

467. His Majesty may by Order in Council to be made at any time after the passing of this Act provide that as from such date as may be specified in the Order any law in force in Burma shall, until repealed or amended by the Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be consequential on the separation of India and Burma.

In this section the expression "law" does not include an Act of Parliament, but includes any ordinance, order, byelaw, rule or regulation having in Burma the force of law.

High Commissioner for Burma.

468. (1) If the Governor in his discretion thinks fit to direct that there shall be a High Commissioner for Burma in the United Kingdom, the Governor, exercising his individual judgment, may appoint a person to be High Commissioner and prescribe his salary and conditions of service.

(2) The High Commissioner shall perform on behalf of the Government of Burma and the Railway Board such functions in connection with the business of that Government and Board, and, in particular, such functions in relation to the making of contracts, as the Governor may from time to time direct.

(3) The provisions of chapter IX of this Part of this Act (which relates to the services in Burma) shall apply in relation to appointments to and to persons serving on the staff of the High Commissioner for Burma as if the service of the members of his staff were service rendered in Burma.

Secretarial staff of Governor of Burma

469. (1) The Governor shall have his own secretarial staff to be appointed by him in his discretion.

(2) The salaries and allowances of persons so appointed and the office accommodation and other facilities to be provided for them shall be such as the Governor may in his discretion determine, and the said salaries and allowances and the expenses incurred in providing the said accommodation and facilities shall be charged on the revenues of Burma

No proceedings to lie against Governor or Secretary of State

470. No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in Burma against the Governor or against the Secretary of State, whether in a personal capacity or otherwise, and, except with the sanction of His Majesty in Council no proceedings whatsoever shall lie in any court in Burma against any person who has been the Governor or the Secretary of State, in respect of anything done or omitted to be done by either of them during his term of office in performance or purported performance of the duties thereof:

Provided that nothing in this section shall be construed as restricting the right of any person to bring against the Government of Burma or the Secretary of State such proceedings as are mentioned in chapter X of this Part of this Act

Removal of certain disqualifications on the occasion of the first elections to Legislature

471. For this purposes of the first elections of persons to serve as members of the Legislature, no person shall be subject to any disqualification by reason only of the fact that he holds—

(*a*) an office of profit as a non-official member of the Executive Council of the Governor of Burma or as a Minister in the Province of Burma;

(*b*) an office which is not a whole-time office remunerated either by salary or by fees.

Procedure as respects proposals for amendment of certain provisions of Act and Orders in Council.

472. (1) If at any time after the expiration of ten years from the commencement of this Part of this Act the Legislature, on motions proposed in each Chamber by a minister on behalf of the council of ministers, pass a resolution recommending any such amendment of this Act or of an Order in Council made thereunder as is hereinafter mentioned, and on motions proposed in like manner present to the Governor an address for submission to His Majesty praying that His Majesty may be pleased to communicate the resolution to Parliament, the Secretary of State shall, within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament a statement of any action which it may be proposed to take thereon.

The Governor when forwarding any such resolution and address to the Secretary of State shall transmit therewith a statement of his opinion as to the proposed amendment and, in particular, as to the effect which it would have on the interests of any minority, together with a report as to views of any minority likely to be affected by the proposed amendment and as to whether

a majority of the representatives of that minority in the Legislature support the proposal, and the Secretary of State shall cause such statement and report to be laid before Parliament.

In performing his duties under this subsection, the Governor shall act in his discretion.

(2) The amendments referred to in the preceding subsection are—

(*a*) any amendment of the provisions relating to the composition of the Legislature or the method of choosing or the qualifications of the members thereof;

(*b*) any amendment of the provisions relating to the qualifications entitling persons to vote at elections.

(3) His Majesty in Council may at any time before or after the commencement of this Part of this Act, whether or not ten years have elapsed from the commencement of this Part of this Act, and whether or not any such address as is mentioned in this section has been submitted to His Majesty, make in the provisions of this Act any such amendment as is referred to in subsection (2) of this section:

Provided that, if no such address has been submitted to His Majesty, then, before the draft of any order which it is proposed to submit to His Majesty is laid before Parliament, the Secretary of State shall, unless it appears to him that the proposed amendment is of a minor or drafting nature, take such steps as His Majesty may direct for ascertaining the views of the Government and the Legislature and of any minority likely to be affected by the proposed amendment, and whether a majority of the representatives of that minority in the Legislature support the proposal.

Power of His Majesty to amend the Eleventh Schedule

473. His Majesty may, by Order in Council—

(*a*) direct that the whole or any specified part of any of the areas specified in Part I of the Eleventh Schedule to this Act shall be deemed to be, or be part of, an area specified in Part II of that Schedule;

(*b*) direct that the whole or any specified part of an area specified in Part II of the said Schedule shall be deemed not to be, or not to be part of, an area specified in that Schedule;

(*c*) alter, but only by way of rectification of boundaries, any of the areas specified in that Schedule;

(*d*) on any alteration of the boundaries of Burma or of His Majesty's territories therein, declare any territory not previously included in that Schedule to be, or to be part of, an area specified in Part I or in Part II of that Schedule; and any such Order may contain such incidental and consequential provisions as appear to His Majesty to be necessary or proper.

Power of His Majesty in Council to remove difficulties as respects Burma.

474. (1) Whereas difficulties may arise in relation to the transition in Burma from the provisions of the Government of India Act to the provisions of Part XIV of this Act:

And whereas the nature of those difficulties and of the provision which should be made for meeting them cannot at the date of the passing of this Act be fully foreseen:

Now therefore, for the purpose of facilitating the said transition, His Majesty may by Order in Council—

(*a*) direct that this Act and any provisions of the Government of India Act still in force shall in Burma, during such limited period as may be specified in the Order, have effect subject to such adaptations and modifications as may be so specified;

(*b*) make, with respect to a limited period so specified, such temporary provision as he thinks fit for ensuring that, while the said transition is being effected and during the period immediately following it, there are available

to the Government of Burma sufficient revenues to enable its business to be carried on; and

(c) make such other temporary provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Order.

(2) No Order in Council shall be made under this section after the expiraton of six months from the commencement of this Part of this Act.

475. (1) Any power conferred by this Part of this Act on His Majesty in Council shall be exercisable only by Order in Council, and subject as hereinafter provided, the Secretary of State shall lay before Parliament the draft of any Order which it is proposed to recommend His Majesty to make in Council under any provision of this Part of this Act, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the form of the draft, or with such amendments as both Houses of Parliament may have agreed to recommend to His Majesty:

Orders in Council.

Provided that, if at any time when Parliament is dissolved or prorogued or when both Houses of Parliament are adjourned for more than fourteen days, the Secretary of State is of opinion that on account of urgency an Order in Council should be made under this Part of this Act forthwith, it shall not be necessary for a draft of the Order to be laid before Parliament, but the Order shall cease to have effect at the expiration of twenty-eight days from the date on which the Commons House first sits after the making of the Order unless within that period resolutions approving the making of the Order are passed by both Houses of Parliament

(2) His Majesty in Council may by a subsequent Order, made in accordance with the provisions of the preceding subsection, revoke or vary any Order previously made by him in Council under this Part of this Act

(3) Nothing in this section applies to any Order of His Majesty in Council made in connection with any appeal to His Majesty in Council, or to any Order of His Majesty in Council sanctioning the taking of proceedings against a person who has been the Governor or the Secretary of State.

476. (1) In this Part of the Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

Interpretation

"Burma" includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the commencement of this Part of this Act comprised in India, being territories lying to the east of Bengal, the State of Manipur, Assam, and any tribal areas connected with Assam;

"British Burma" means so much of Burma as belongs to His Majesty;

"borrow" includes the raising of money by the grant of annuities and "loan" shall be construed accordingly;

"debt" includes any liability in respect of any obligation to repay capital sums by way of annuities, and any liability under any guarantee, and "debt charges" shall be construed accordingly;

"existing Indian or Burman law" means any law, ordinance, order, byelaw, rule or regulation (as in force in Burma) passed or made before the commencement of this Part of this Act by any legislature, authority or person ...d in India, being a legislature, ...h a law;

...overnment of Burma wi... meaning of the Government of India Act or any Act repealed by ... in force at the relevant time;

(a)
(b) 1
(c) 1
or, if as r
constituency.

To each territorial constituency of any class one or more seats of that class shall be assigned.

6. (1) No person shall be entitled to vote at an election to fill a Sikh seat or a Muhammadan seat in the Council of State unless he is a Sikh or a Muhammadan as the case may be.

(2) No person who is, or is entitled to be, included in the electoral roll for a territorial constituency in any Province for the election of persons to fill a Sikh seat or a Muhammadan seat in the Council of State shall be entitled to vote at an

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led castes is allotted, a person to fill that seat shall be chosen by the members of those castes who hold seats in the Chamber or, as the case may be, either Chamber of the Legislature of that Province.

9. In any Province to which a seat reserved for women is allotted, a woman to fill that seat shall be chosen by the persons, whether men or women, who hold seats in the Chamber or, as the case may be, the Chambers of the Legislature of that Province.

10. Persons to fill the seats allotted to the Anglo-Indian, European and Indian Christian communities shall be chosen by the members of Electoral Colleges consisting of such Anglo Indians, Europeans and Indian Christians, as the case may be, as are members of the Legislative Council of any Governor's Province or of the Legislative Assembly of any Governor's Province

The Rules regulating the conduct of elections by the European Electoral College shall be such as to
ny occasion where more than one seat falls
seats to be then filled shall be filled by
same Province.
held a seat in the Council of State unless—

(a) in the case of a seat allotted to a Governor's Province or a Chief Commissioner's Province, he is qualified to vote in a territorial constituency in the Province
ted

the

12. Subject to the provisions of the four next succeeding paragraphs, the term of office of
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shall be chosen to serve
only for the

13. Upon the first constitution of the Council of State persons shall be chosen
Provinces
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sen shall be
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the Table
of Seats, the numbers specified as respects seats of different classes in columns two to six, in columns seven to eleven and in columns twelve to sixteen respectively shall be the numbers of the seats of the different classes to be filled upon the first constitution of the Council by members chosen to serve for three years only, by members chosen to serve for six years only, and by members chosen to serve for nine years.

15. The person chosen upon the first constitution of the Council to fill the Anglo-Indian seat shall be chosen to serve for nine years ; of the seven persons then chosen to fill the European seats, three shall be chosen to serve for three years only, one shall be chosen to serve for six years only and three shall be chosen to serve for nine years ; and, of the two persons then chosen to fill the Indian Christian seats, one shall be chosen to serve for three years only and one shall be chosen to serve for nine years.

two shall be chosen to serve for six years only and two shall be chosen to serve for nine years.

The Federal Assembly.

17. The allocation of seats in the Federal Assembly, other than seats allotted to Indian States, shall be as shown in the relevant Table of Seats appended to this Part of this Schedule.

18. To each Governor's Province and Chief Commissioner's Province specified in the first column of the Table there shall be allotted the number of seats specified in the second column opposite to that Province, and of those seats—

(i) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes ,

(ii) the numbers specified in the next eight columns shall be the numbers of seats to be filled respectively by persons chosen to represent (*a*) the Sikh community ; (*b*) the Muhammadan community ; (*c*) the Anglo-Indian community ; (*d*) the European community ; (*e*) the Indian Christian community ; (*f*) the interests of commerce and industry , (*g*) landholders ; and (*h*) the interests of labour ; and

(iii) the number specified in the thirteenth column shall be the number of seats reserved to women.

There shall also be in the Federal Assembly four seats not allotted to any Province, of which three shall be seats to be filled by representatives of commerce and industry and one shall be a seat to be filled by a representative of labour.

19 Subject to the provisions of the next succeeding paragraph, persons to fill the seats in the Federal Assembly allotted to a Governor's Province as general seats, Sikh seats or Muhammadan seats shall be chosen by electorates consisting of such of the members of the Legislative Assembly of the Province as hold therein general seats, Sikh seats or Muhammadan seats respectively, voting in the case of a general election in accordance with the principle of proportional representation by means of the single transferable vote .

Provided that in the North-West Frontier Province the holders of Sikh seats,

l for representatives of backward

, shall, for the purposes of this

effect with respect to the general seats reserved in any Governor's Province for members of the scheduled castes :—

For the purposes of a general election of members of the Federal Assembly,—

(*a*) there shall be a primary electorate consisting of all persons who were successful candidates at the primary elections held, in accordance with the provisions of the Fifth Schedule to this Act, on the occasion of the last general election of members of the Legislative Assembly of the Province for the purpose of selecting candidates for seats reserved for members of the scheduled castes ;

(*b*) the members of the primary electorate so constituted shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved ; and

(*c*) no persons who is not so elected as a candidate shall be qualified to be chosen to fill such a seat.

Rules made under this Part of this Schedule shall make provision as to the manner in which a casual vacancy occurring in a seat to which this paragraph applies is to be filled

21. For the purpose of choosing persons to fill the woman's seat in the Federal Assembly there shall be for British India an Electorate College consisting of such women as are members of the Legislative Assembly of any Governor's Province, and the person to fill a woman's seat allotted to any particular Province shall be chosen by the members of the College.

Rules regulating the conduct of elections by the women's Electoral College shall

Province, and the person to fill an Anglo-Indian, European or Indian Christian seat allotted to any particular Province shall be chosen by the members of the appropriate electoral college.

In choosing at a general election the persons to fill the Indian Christian seats allotted to the Province of Madras, the Indian Christian Electoral College shall vote in accordance with the principle of proportional representation by means of the

Assembly which are to be filled by lholders and representatives of labour

(a) in the case of a seat allotted to a Province which is to be filled by a representative of commerce and industry, by such chambers of commerce and similar associations voting in such manner as may be prescribed ;

(b) in the case of a seat allotted to a Province which is to be filled by a landholder, by such persons voting in such territorial constituencies and in such manner as may be prescribed ;

(c) in the case of a seat allotted to a Province which is to be filled by a respresentative of labour, by such organisations, or in such constituencies and in accordance with such manner of voting as may be prescribed ;

(d) in the case of one of the non-provincial seats which are to be filled by representatives of commerce and industry, by such Associated Chambers of Commerce, in the case of another such seat by such Federated Chambers of Commerce and in the case of the third such seat by such commercial bodies in Northern

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(a) in the case of Coorg, by the members of the Legislative Council ; and

(b) in other cases in such manner as may be prescribed.

25 A person shall not be qualified to hold a seat in the Federal Assembly unless—

Muhammadan seat, an Anglo- or a woman's seat allotted to he is qualified to hold a seat of the same class in the Legislative Assembly, or, in the case of Coorg, the Legislative Council, of that Province ;

(ii) in the case of any other seat, he possesses such qualifications as may be prescribed.

General.

26 (1) In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say :—

"a European" means a person whose father or any of whose other male progenitors in the male line is or was of European descent and who is not native of India ;

"an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is a native of India ;

"an Indian Christian" means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian ;

"the scheduled castes" means s
within castes, races or tribes, bein
appear to His Majesty in Council
known as "the depressed classes" as

"prescribed" means prescribed
any matter which under this Act the
are competent to regulate, prescrib
made under the next succeeding paragraph.

native of India" has the same meaning as e Government of India Act, 1870,* and domiciled within the dominions of His Majesty in India or Burma of parents habitually resident in India or Burma and not established there for temporary purposes only

27. In so far as provision with re by His Majesty in Council or, after Act of that Legislature (where the ture is competent to make laws), t judgment, may make rules for carr part of this Schedule and for secur and the Federal Assembly and, in par [illegible] generally to—

including casual vacancies and the proceedings [illegible];

(iii) the conduct of elections, including the application to elections of the *principle* of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are to be filled by persons to be chosen to serve for different terms, or are reserved for members of the scheduled castes;

(iv) the expenses of candidates at elections;

(v) corrupt practices and other offences at or in connection with elections;

(vi) the decision of doubts and disputes arising out of or in connection with the choice of persons to fill seats in the Council of State or the Federal Assembly; and

(vii) the manner in which rules are to be carried into effect.

TABLE OF SEATS.

The Council of State.

Representatives of British India.

(i) *Allocation of seats.*

1. Province or Community	2. Total seats	3 General seats.	4 Seats for Scheduled Castes	5 Sikh seats	6 Muhammadan seats.	7. Women's seats.
Madras	20	14	1	—	4	1
Bombay	16	10	1	—	4	1
Bengal	20	8	1	—	10	1
United Provinces	20	11	1	—	7	1
Punjab	16	3	—	4	8	1
Bihar	16	10	1	—	4	1
Central Provinces and Berar	8	6	1	—	1	—
Assam	5	3	—	—	2	—
North-West Frontier Province	5	1	—	—	4	—
Orissa	5	4	—	—	1	—
Sind	5	2	—	—	3	—
British Baluchistan	1	—	—	—	1	—
Delhi	1	1	—	—	—	—
Ajmer Merwara	1	1	—	—	—	—
Coorg	1	1	—	—	—	—
Anglo Indians		—	—	—	—	—
Europeans	7	—	—	—	—	—
Indian Christians	2	—	—	—	—	—
Totals	150	75	6	4	49	

* 33 and 34 Vict. c. 3.

(ii) *Distribution of seats for purposes of triennial elections.*

1. Province.	Number of seats to be filled originally for three years only.					Number of seats to be filled originally for six years only.					Number of seats to be filled originally for nine years.				
	2. General Seats	3. Seats for Scheduled castes.	4. Sikh seats.	5. Muhammadan Seats.	6. Women's Seats.	7. General Seats.	8. Seats for Scheduled castes	9. Sikh Seats.	10. Muhammadan Seats	11. Women's Seats	12. General Seats.	13. Seats for Scheduled castes	14. Sikh Seats.	15. Muhammadan Seats	16. Women's Seats.
Madras	—	—	—	—	—	7	—	—	2	1	7	1	—	2	—
Bombay	5	—	—	2	1	—	—	—	—	—	5	1	—	2	—
Bengal	4	1	—	5	—	—	—	—	—	—	4	—	—	5	1
United Provinces	5	1	—	3	1	6	—	—	4	—	—	—	—	—	—
Punjab	2	—	2	4	—	1	—	2	4	1	—	—	—	—	—
Bihar	—	—	—	—	—	5	1	—	2	—	5	—	—	2	1
Central Provinces and Berar	—	—	—	—	—	6	1	—	1	—	—	—	—	—	—
Assam	—	—	—	—	—	3	—	—	2	—	—	—	—	—	—
North-West Frontier Province	—	—	—	—	—	—	—	—	—	—	1	—	—	4	—
Orissa	4	—	—	1	—	—	—	—	—	—	—	—	—	—	—
Sind	2	—	—	3	—	—	—	—	—	—	—	—	—	—	—
British Baluchistan	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—
Delhi	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Ajmer-Merwara	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Coorg	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Totals	22	2	2	18	2	28	2	2	15	2	25	2	—	16	2

TABLE OF SEATS.

The Federal Assembly.

Representatives of British India.

1.	2.	3. General Seats :—	4	5	6	7.	8.	9.	10	11	12.	13.
Province.	Total Seats.	Total of General Seats.	General seats reserved for Scheduled castes.	Sikh Seats.	Muhammadan Seats.	Anglo-Indian Seats.	European Seats.	Indian Christian Seats.	Seats for representatives of commerce and industry.	Landholders Seats	Seats for representatives of labour.	Women's Seats.
Madras	37	19	4	...	8	1	1	2	2	1	1	2
Bombay	30	13	2	...	6	1	1	1	3	1	2	2
Bengal	37	10	3	...	17	1	1	1	3	1	2	1
United Provinces	37	19	3	...	12	1	1	1	...	1	1	1
Punjab	30	6	1	6	14	...	1	1	...	1	...	1
Bihar	30	16	2	...	9	...	1	1	...	1	1	1
Central Provinces and Berar	15	9	2	...	3	...	...	...	...	1	1	1
Assam	10	4	1	...	3	...	1	1	...	...	1	...
North-West Frontier Province	5	1	...	...	4	...	...	...	...	...	...	...
Orissa	5	4	1	...	1	...	...	...	...	...	...	...
Sind	5	1	...	...	3	...	1	...	...	...	...	...
British Baluchistan	1	...	...	...	1	...	...	...	...	...	...	...
Delhi	2	1	...	...	1	...	...	...	...	...	...	...
Ajmer-Merwara	1	1	...	...	...	...	...	...	...	...	...	...
Coorg	1	1	...	...	...	...	...	...	...	...	...	...
Non-Provincial Seats	4	...	...	...	...	...	...	...	3	...	1	...
Totals	250	105	19	6	82	4	8	8	11	7	10	9

PART II.

REPRESENTATIVES OF INDIAN STATES.

1. The allocation to Indian States of seats in the Federal Legislature shall be as shown in the Table appended to this Part of this Schedule, hereinafter referred to as the "Table of Seats," and persons to represent Indian States in that Legislature shall be chosen and appointed in accordance with the provisions hereinafter contained.

2. In the case of the Council of State, there shall be allotted to each State or, as the case may be, to each group of States specified in the first column of the Table of Seats, the number of seats specified in the second column of the said Table opposite to that State or to that group of States.

3. In the case of the Federal Assembly, there shall be allotted to each State or, as the case may be, to each group of States specified in the third column of the Table of Seats, the number of seats specified in the fourth column of the said Table

acceded to the Federation ; and

(ii) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age .

Provided that—

shall not apply to any named subject, or to subjects generally, of that State until that State comes under the rule of a Ruler who is of an age to exercise ruling powers ; and

(*b*) sub-paragraph (ii) of this paragraph shall not apply to a Ruler who is exercising ruling powers.

5. Upon the expiration of the term for which he is appointed to serve as a hall be

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in Divisions XVI and XVII of the Table of Seats,—

(i) the Rulers of States constituting a g the Council of State is allotted shall in rotation

(ii) the Rulers of the States constituting the Federal Assembly is allotted shall appoint

Provided that the Rulers of two or more States entitled to appoint in rotation a person to fill a seat in the Council of State allotted to a group of States may by agreement, and with the approval of the Governor-General in his discretion, appoint jointly a person to fill that seat

7. The period for which a person shall be appointed to fill a seat shall be—

(i) in the case of a person appointed to fill a steat in the Council of State—

(*a*) by the Ruler of a State entitled to separate representation, nine years ;

(*b*) jointly by the Rulers of all the States in a group which have acceded to the Federation, three years ;

(*c*) by the Ruler of a State appointing in rotation, one year subject, however, to the special provisions of the next succeeding paragraph with respect to certain States therein mentioned :

(*d*) jointly by Rulers of some only of the States in a group which have acceded to the Federation, a period equal to the aggregate of the periods for which each of them might in rotation have appointed a person to hold that seat or three years, whichever

and fill a seat in the Federal Assembly, until

occurrence of a casual vacancy shall of the period for which his predecessor

was appointed ;

(ii) in the case of first appointments to fill seats in the Council of State the Governor-General in his discretion shall make by order provision for securing that approximately one-third of the persons appointed by Rulers entitled to separate representation shall be appointed to fill seats for three years only, approximately one-third to fill seats for six years only and approximately one-third to fill seats for nine years.

8. The Ruler of a State mentioned in this paragraph when appointing in rotation a person to fill a seat in the Council of State shall, notwithstanding anything in the *preceding paragraph, be entitled to appoint that person to fill the seat*—

(*a*) in the case of the Rulers of Panna and of Mayurbhanj, for two years, and
(*b*) in the case of the Ruler of Pudukkottai, for three years.

9 Subject as hereinater provided, the Rulers of two or more States forming a group to which one seat in either Chamber of the Federal Legislature is allotted shall, in choosing a person to be appointed by them jointly to fill that seat, each have one vote, and in the case of an equality of votes the choice shall be determined by

Ruler of a State men-
entitled to two votes
at paragraph shall be
entitled to three votes.

10. A seat in either Chamber allotted to a single State shall remain unfilled until the Ruler of that State has acceded to the Federation, and a seat in either Chamber which is the only seat therein allotted to a group of States shall remain unfilled until the Rulers of at least one-half of those States have so acceded but, subject
of the seats in either Chamber allotted
remain unfilled by reason of the non-
non-accession be due to the minority of
the Rulers of States to fill
prescribed manner appoint
so unfilled to be additional

embers shall not be exercised
after the expiration of twenty years from the establishment of the Federation.

A person appointed under this paragraph as an additional member of either Chamber shall be appointed to fill his seat for a period of one year only.

Federal Assembly allotted to any group of
Table of Seats as entitled to appoint persons
in the prescribed manner by the Rulers of
such of the States in the group as have acceded to the Federation:

Provided that—

(*a*) until the Rulers of two of those States have so acceded, all the three seats shall remain unfilled; and
(*b*) until the Rulers of four of those States have so acceded, two of the three seats shall remain unfilled; and
(*c*) until the Rulers of six of those States have so acceded, one of the three seats shall remain unfilled.

maining unfilled by reason of the provisions
ats remaining unfilled for the purposes of

ph shall apply with respect to the two seats
in the Federal Assembly allotted to the
Table of Seats:—

(*a*) the States in question are such States, being States which on the first day

may be enumerated in rules made by the Governor-General in his discretion;

(*b*) the Governor-General shall, in the rules so made by him, divide the said States into five groups, and of the five seats in the Federal Assembly allotted to those States one shall be deemed to be allotted to each of the groups;

(c) a seat in the Federal Assembly allotted to one of the said groups shall remain unfilled until the Rulers of at least one-half of the States in the group have acceded to the Federation, but, save as aforesaid, a person to fill such a seat shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation;

(d) persons to fill the two seats in the Council of State allotted to the States comprised in the said Division shall be appointed in the prescribed manner by the persons appointed under the preceding subparagraph to fill seats in the Federal Assembly:

unfi

s seats remaining un-

f Seats by transferring or column three of that n, if he deems it ex-

(a) with a view to reducing the number of seats which by reason of the non-accession of a State or States would otherwise remain unfilled; or

(b) with a view to associating in separate groups States whose rulers do, and States whose rulers do not, desire to make appointments jointly instead of in rotation,

and is satisfied that such variation will not adversely affect the rights and

eight of this Part of this Schedule ... Ruler of the State has agreed to relinquish the privileges enjoyed by him under the said paragraph and under paragraph nine.

Where an order varying the Table of Seats is made under this paragraph, references (whether express or implied) in the foregoing provisions of this Part of this Schedule to the Table shall be construed as references to the Table as so varied

with respect to—

anner in which appointments are to be made, ke appointments in rotation are to make appointments are to take effect;

(b) the filling of casual vacancies in seats;

(c) the decision of doubts or dispute arising out of or in connection with any appointment, and

(d) the manner in which the

In this Part of this Schedul

His Majesty in Council or by rules

15. For the purposes of subsection (2) of section five of this Act—

(i) if the Rulers of at least one-half of the States included in any group to which one seat in the C ... cede to the Federation, the together to choose one

to be formed out of the , sufficient accede to the members of the Federal ether to them to acceding Council

choose appoint shall be of State; and

population attributed he States comprised in ernor-General may in ates shall be taken to

TABLE OF SEATS

The Council of State and the Federal Assembly.

Representatives of Indian States.

1. States and Groups of States	2. Number of seats in Council of State	3 States and Groups of States	4 Number of seats in the Federal Assembly	5. Population
		DIVISION I		
Hyderabad ...	5	Hyderabad ...	16	14,436,148
		DIVISION II.		
Mysore ...	3	Mysore ...	7	6,557,302
		DIVISION III.		
Kashmir ...	3	Kashmir ...	4	3,646,243
		DIVISION IV.		
Gwalior ...	3	Gwalior ...	4	3,523,070
		DIVISION V.		
Baroda ...	3	Baroda ...	3	2,443,007
		DIVISION VI.		
Kalat	2	Kalat	1	342,101
		DIVISION VII.		
Sikkim ...	1	Sikkim	—	109,808
		DIVISION VIII.		
1 Rampur ...	1	1 Rampur	1	465,225
2. Benares ...	1	2. Benares	1	391,272
		DIVISION IX.		
1. Travancore ...	2	1. Travancore ...	5	5,095,973
2. Cochin ...	2	2. Cochin ...	1	1,205,016
3 Pudukkottai ...	1 (for Pudukkottai, Banganapalle and Sandur)	3. Pudukkottai ...	1 (for Pudukkottai, Banganapalle and Sandur)	400,695
Banganapalle		Banganapalle ...		39,218
Sandur ...		Sandur ...		13,583

1. States and Groups of States	2 Number of seats in Council of State.	3 States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Population.
		Division X.		
1. Udaipur. ...	2	1. Udaipur ...	2	1,566,910
2. Jaipur ...	2	2. Jaipur	3	2,631,775
3. Jodhpur ...	2	3. Jodhpur... ...	2	2,125,982
4. Bikaner ...	2	4. Bikaner... ...	1	936,218
5. Alwar ...	1	5 Alwar	1	749,751
6. Kotah ...	1	6. Kotah	1	685,804
7. Bharatpur ...	1	7. Bharatpur ...	1	486,954
8. Tonk ...	1	8. Tonk	1	317,360
9. Dholpur ...	1	9. Dholpur ...	1	254 986
10. Karauli ...	1	Karauli		140,525
11. Bundi ...	1	10. Bundi	1	216,722
12 Sirohi ..	1	Sirohi		216,528
13. Dungarpur ...	1	11. Dungarpur ...	1	227,544
14 Banswara ...	1	Banswara ...		260,670
15 Partabgarh ...	1	12. Partabgarh ...	1	76,539
Jhalawar ...		Jhalawar ...		107,890
16. Jaisalmer ...	1	13. Jaisalmer ...	1	76,255
Kishengarh ...		Kishengarh ...		85,744
		Division XI.		
1. Indore .	2	1. Indore . .	2	1,325,089
2 Bhopal . .	2	2. Bhopal . .	1	729,955
3 Rewa .	2	3 Rewa . .	2	1,587,445
4 Datia	1	4. Datia . .	1	158,834
5 Orchha . .	1	Orchha . .		314,661
6. Dhar . .	1	5. Dhar . .		243,430
7 Dewas (Senior)	1	Dewas (Senior) .	1	83,321
Dewas (Junior)		Dewas (Junior)		70,513
8. Jaora . .	1	6. Jaora . .	1	100,166
Ratlam . .		Ratlam . .		107,321
9 Panna . .		7. Panna .		212,130
Samthar .	1	Samthar . .	1	33,307
Ajaigarh .		Ajaigarh . .		85,895
10. Bijawar .		8. Bijawar . .		115,852
Charkhari .	1	Charkhari . .	1	120,351
Chhatarpur .		Chhatarpur .		161,267
11. Baoni . .		9 Baoni . .		19,132
Nagod . .	1	Nagod . .	1	74,589
Maihar . .		Maihar . .		68,991
Baraundha		Baraundha . .		16,071
12. Barwani . .	1	10. Barwani . .		141,110
Ali Rajpur .		Ali Rajpur . .	1	101,963
Shahpura .		Shahpura . .		54,233
13. Jhabua . .	1	11. Jhabua . .		145,522
Sailana . .		Sailana . .	1	35,223
Sitamau. .		Sitamau . .		28,422
14. Rajgarh. .	1	12. Rajgarh . .		134,891
Narsingarh .		Narsingarh . .	1	113,873
Khilchipur .		Khilchipur . .		45,583

1. States and Groups of States	2. Number of seats in Council of State.	3. States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Population
		DIVISION XII		
1. Cutch	1	1 Cutch	1	514,307
2. Idar	1	2 Idar	1	262,660
3. Nawanagar	1	3. Nawanagar	1	409,192
4. Bhavnagar	1	4 Bhavnagar	1	500,274
5. Junagadh	1	5. Junagadh	1	545,152
6. Rajpipla	1	6. Rajpipla	1	206,114
Palanpur		Palanpur		264,179
7. Dhrangadhra	1	7. Dhrangadhra	1	88,961
Gondal		Gondal		205,846
8. Porbandar	1	8. Porbandar	1	115,673
Morvi		Morvi		113,023
9. Radhanpur		9. Radhanpur		70,530
Wankaner	1	Wankaner	1	44,259
Palitana		Palitana		62,150
10. Cambay		10. Cambay		87,761
Dharampur	1	Dharampur	1	112,031
Balasinor		Balasinor		52,525
11. Baria		11. Baria		159,429
Chhota Udepur		Chhota Udepur		144,640
Sant	1	Sant	1	83,531
Lunawada		Lunawada		95,162
12. Bansda		12. Bansda		48,839
Sachin		Sachin		22,107
Jawhar	1	Jawhar		57,261
Danta		Danta		26,196
13 Dhrol		Dhrol	1	27,639
Limbdi		Limbdi		40,088
Wadhwan	1	Wadhwan		42,602
Rajkot		Rajkot		75,540
		DIVISION XIII.		
1. Kolhapur	2	1. Kolhapur	1	957,137
2 Sangli	1	2. Sangli	1	258,442
Savantvadi		Savantvadi		230,589
3 Janjira		3. Janjira		110,379
Mudhol	1	Mudhol	1	62,832
Bhor		Bhor		141,546
4. Jamkhandi		4. Jamkhandi		114,270
Miraj (Senior)		Miraj (Senior)		93,938
Miraj (Junior)		Miraj (Junior)		40,684
Kurundwad (Senior)	1	Kurundwad (Senior)	1	44,204
Kurundward (Junior)		Kurundwad (Junior)		39,583
5. Akalkot		5. Akalkot		92,605
Phaltan.		Phaltan		58,761
Jath	1	Jath	1	91,0
Aundh		Aundh		
Ramdurg		Ramdurg		

1. States and Groups of States.	2. Number of seats in Council of State.	3. States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Population.
		DIVISION XIV.		
1. Patiala ...	2	1. Patiala	2	1,625,520
2. Bahawalpur ...	2	2. Bahawalpur ...	1	984,612
3. Khairpur ...	1	3. Khairpur ...	1	227,183
4. Kapurthala ...	1	4. Kapurthala ...	1	316,757
5 Jind ...	1	5. Jind ...	1	324,676
6. Nabha ...	1	6. Nabha ...	1	287,574
		7. Tehri-Garhwal ...	1	349,573
7. Mandi ...		8. Mandi ...		207,465
Bilaspur ...	1	Bilaspur ...	1	100,994
Suket ...		Suket ...		58,408
8. Tehri-Garhwal				
Sirmur ...	1	9. Sirmur ...	1	148,568
Chamba ...		Chamba ...		146,870
9. Faridkot ...		10. Faridkot ...		164,364
Malerkotla ...	1	Malerkotla ...	1	83,072
Loharu ..		Loharu ...		23,338
		DIVISION XV.		
1. Cooch Behar ...	1	1. Cooch Behar ...	1	590,886
2. Tripura .	1	2. Tripura ...	1	382,450
Manipur ...		3. Manipur ...	1	445,606
		DIVISION XVI.		
1. Mayurbhanj ...		1. Mayurbhanj ...	1	889,603
Sonepur ...	1	2 Sonepur ...	1	237,920
2 Patna ...		3. Patna ...	1	566,924
Kalahandi ...	1	4. Kalahandi ...	1	513,716
3. Keonjhar ...		5. Keonjhar ...	1	460,609
Dhenkanal ...		6. Gangpur ...	1	356,674
Nayagarh ...	1	7. Bastar ...	1	524,721
Talcher ...		8 Surguja ...	1	501,939
Nilgiri .				
4. Gangpur ...				
Bamra ...		9. Dhenkanal ...		284,326
Seraikela ...		Nayagarh ...		142,406
Baud ...	1	Seraikela ...		143,525
Bonai ...		Baud ...		135,248
5. Bastar ...		Talcher ...	3	69,702
Surguja ...		Bonai ...		80,186
Raigarh ...		Nilgiri ...		68,594
Nandgaon ...	1	Bamra ...		151,047
		10. Raigarh ...		277,5'9
6. Khairagarh ..		Khairagarh ...		157,409
Jashpur ...		Jashpur ...		193,698
Kanker ...	1	Kanker ...	3	136,101
Korea ...		Sarangarh ...		128,967
Sarangarh ...		Korea ...		90,886
		Nandgaon ...		182,380

1. States and Groups of States.	2. Number of seats in Council of State.	3. States and Groups of States	4. Number of seats in the Federal Assembly.	5. Population.
		DIVISION XVII		
States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule.	2	States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule,	5	3,032,197

Total population of the States in this Table : 78,981,912

SECOND SCHEDULE *

PROVISIONS OF THIS ACT WHICH MAY BE AMENDED WITHOUT AFFECTING THE ACCESSION OF A STATE

Part I,
Part II, ... he Governor-General on behalf of H ... ration, and the definition

... ice; the ... nquillity ... Govern- ... and the ... exercise ... overnor-General; the superintendence of the Secretary of State; and the making of rules by the Governor-General in his discretion for the transaction of, and the securing of transmission to him of information with respect to, the business of the Federal Government.

... f

... with respect to external ... in the direction and control of which he is required to act in his discretion and of the sums payable to His Majesty in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States; the procedure with respect to estimates and demands for grants; suplementary financial statements; the making of rules by

* See Section 6.

1. States and Groups of States.	2. Number of seats in Council of State.	3. States and Groups of States	4. Number of seats in the Federal Assembly.	5. Population.
		DIVISION XIV.		
1. Patiala ...	2	1. Patiala	2	1,625,520
2. Bahawalpur ...	2	2. Bahawalpur ...	1	984,612
3. Khairpur ...	1	3. Khairpur ...	1	227,183
4. Kapurthala ...	1	4. Kapurthala ...	1	316,757
5. Jind ...	1	5. Jind ...	1	324,676
6. Nabha ...	1	6. Nabha ...	1	287,574
		7. Tehri-Garhwal ...	1	349,573
7. Mandi ...		8. Mandi ...		207,465
Bilaspur ...	1	Bilaspur ...	1	100,994
Suket ...		Suket ...		58,408
8. Tehri-Garhwal				
Sirmur ...	1	9 Sirmur ...	1	148,568
Chamba ...		Chamba ...		146,870
9 Faridkot ...		10. Faridkot ...		164,364
Malerkotla ...	1	Malerkotla ...	1	83,072
Loharu ..		Loharu ...		23,338
		DIVISION XV.		
1. Cooch Behar ...	1	1. Cooch Behar ...	1	590,886
2. *Tripura* .	1	2. *Tripura* ...	1	382,450
Manipur ...		3. Manipur ...	1	445,606
		DIVISION XVI.		
1 Mayurbhanj ...	1	1. Mayurbhanj ...	1	889,603
Sonepur ...		2. Sonepur ...	1	237,920
2 Patna ...	1	3. Patna ...	1	566,924
Kalahandi ...		4. Kalahandi ...	1	513,716
3. Keonjhar ...		5. Keonjhar ...	1	460,609
Dhenkanal ...		6. Gangpur ...	1	356,674
Nayagarh ...	1	7. Bastar ...	1	524,721
Talcher ...		8 Surguja ...	1	501,939
Nilgiri .				
4. Gangpur ...				
Bamra ...		9. Dhenkanal ...		284,326
Seraikela ...		Nayagarh ...		142,406
Baud ...	1	Seraikela ...		143,525
Bonai ...		Baud ...		135,248
5. Bastar ...		Talcher ...	3	69,702
Surguja ...		Bonai ...		80,186
Raigarh ...		Nilgiri ...		68,594
Nandgaon ...	1	Bamra ...		151,047
		10. Raigarh ...		277,5[illegible]9
6. Khairagarh ..		Khairagarh ...		157,409
Jashpur ...		Jashpur ...		193,698
Kanker ...	1	Kanker ...	3	136,101
Korea ...		Sarangarh ...		128,967
Sarangarh ...		Korea ...		90,886
		Nandgaon ...		182,380

1. States and Groups of States.	2. Number of seats in Council of State.	3. States and Groups of States	4. Number of seats in the Federal Assembly.	5. Population.
		DIVISION XVII.		
States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule.	2	States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule,	5	3,032,197

Total population of the States in this Table : 78,981,912

SECOND SCHEDULE *

PROVISIONS OF THIS ACT WHICH MAY BE AMENDED WITHOUT AFFECTING THE ACCESSION OF A STATE.

Part I, in so far as it relates to the Commander-in-Chief

Part II, chapter II, save with respect to the exercise by the Governor-General on behalf of His Majesty of the executive authority of the Federation, and the definition of the functions of the Governor-General ; the executive authority of the Federation ; ministers

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anquillity

of India or any part thereof, the financial stability and credit of the Federal Government, the rights of Indian States and the rights and dignity of their Rulers, and the discharge of his functions by or under the Act in his discretion or in the exercise of his individual judgment ; His Majesty's Instrument of Instructions to the Governor-General ; the superintendence of the Secretary of State ; and the making of rules by the Governor-General in his discretion for the transaction of, and the securing of transmission to him of information with respect to, the business of the Federal Government

Part II, chapter III, save with respect to the number of the representatives of British India and of the Indian States in the Council of State and the Federal Assembly and the manner in which the representatives of the Indian States are to be chosen ; the disqualifications for membership of a chamber of the Federal Legislature in relation to the representatives of the States ; the procedure for the introduction and passing of Bills ; joint sittings of the two Chambers; the assent to Bills, or the withholding assent from Bills, by the Governor-General ; the reservation of Bills for the signification of His Majesty's pleasure ; the annual financial statement : the charg-

pensions

purpose

external

control

e to His

Crown

in its relations with Indian States ; the procedure with respect to estimates and demands for grants ; suplementary financial statements ; the making of rules by

* See Section 6.

the Governor-General for regulating the procedure of, and the conduct of business in, the Legislature in relation to matters where he acts in his discretion or exercises his individual judgment, and for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State; the making of rules by the Governor-General as to the procedure with respect to joint sittings of, and communications between, the two chambers and the protection of judges of the Federal Court and State High Courts, from discussion in the Legislature of their conduct.

Part II, chapter IV, save with respect to the power of the Governor-General to promulgate ordinances in his discretion or in the exercise of his individual judgment, or to enact Governor-General's Acts.

Part III, chapter I. The whole chapter.

responsibilities of the
s and dignity of the
he Governor-General.
those responsibilities.

Part III, chapter III, save with respect to the making of rules by the Governor for prohibiting the discussion of, or the asking of questions on, any matter con-
uler or ruling family of any Indian
l Court and State High Courts

Part III, chapter VI. The whole chapter.

Part IV. The whole Part.

Part V, chapter I, save with respect to the power of the Federal Legislature to make laws for a State; the power of the Governor-General to empower either the Federal Legislature or Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act; any power of a State to repeal a Federal law, and the effect of inconsistencies between a Federal law and a State law.

Part V, chapter II, save with respect to the previous sanction of the Governor-General to the introduction or moving of any Bill or amendment affecting matters as respects which the Governor-General is required to act in his discretion; the power of Parliament to legislate for British India or any part thereof, or the restrictions on the power of the Federal Legislature and of Provincial Legislatures to make laws on certain matters.

Part V, chapter III. The whole chapter.

Part VI, save in so far as the provisions of that Part relate to Indian States, or empower the Governor-General to issue orders to the Governor of a Province for preventing any grave menace to the peace or tranquillity of India or any part thereof.

Part VII, chapter I, in so far as it relates to Burma.

Part VII, chapter II, save with respect to loans and guarantees to Federated States and the appointment, removal and conditions of service of the Auditor-General

Part VII, chapter III, save in so far as it affects suits against the Federation by a Federated State.

Part VIII, save with respect to the constitution and functions of the Federal Railway Authority; the conduct of business between the Authority and the Federal Government, and the Railway Tribunal and any matter with respect to which it has jurisdiction.

Part IX, chapter I, [illegible] Court from

Part XI. The whole Part.

Part XII, save with respect to the saving for rights and obligations of the Crown in its relations with Indian States; the use of His Majesty's forces in connection with the discharge of the functions of the Crown in its said relations; the limitation in relation to Federated States of His Majesty's power to adapt and

and jurisdiction in Federated or any Provincial Legislature Council made thereunder ; and save also the provisions relating to the interpretation of this Act so far as they apply to provisions of this Act which may not be amended without affecting the accession of a State.

Part XIII. The whole Part.

Part XIV. "

First Schedule. The whole Schedule, except Part II thereof.

Third Schedule. The whole Schedule.

Fourth Schedule, save with respect to the oath or affirmation to be taken or made by the Ruler or subject of an Indian State.

Fifth Schedule. The whole Schedule.

Sixth Schedule. "

Seventh Schedule. Any entry in the Legislative Lists in so far as the matters to which it relates have not been accepted by the State in question as matters with respect to which the Federal Legislature may make laws for that State

Eighth Schedule. The whole Schedule.

Ninth Schedule. "

Tenth Schedule. "

Eleventh Schedule. "

Twelfth Schedule. "

Thirteenth Schedule "

Fourteenth Schedule. "

Fifteenth Schedule. "

Sixteenth Schedule.

THIRD SCHEDULE.*

PROVISIONS AS TO GOVERNOR-GENERAL AND GOVERNORS OF PROVINCES.

1. There shall be paid to the Governor-General and to the Governors of the Provinces the following annual salaries, that is to say :—

The Governor-General	250, 800 rupees.
The Governor of Madras The Governor of Bombay The Governor of Bengal The Governor of the United Provinces	120, 000 rupees.
The Governor of the Punjab The Governor of Bihar	100, 000 rupees.
The Governor of the Central Provinces and Berar	72,000 rupees.
The Governor of Assam The Governor of the North West Frontier Province The Governor of Orissa The Governor of Sind	66,000 rupees.

2 There shall be paid to the Governor-General and to the Governors such allowances for expenses in respect of equipment and travelling upon appointment and such allowances during their terms of office as may from time to time be fixed by His Majesty in Council, and such provision shall be made for enabling the

niently and with dignity

esty in Council,

nt on leave, he shall in

be fixed by His Majesty in Council,

4 There shall be granted to and in respect of the Governor-General and the Governor of very Province such customs privileges as may be specified by Order in Council.

5. While any person appointed by His Majesty to act as a Governor-General or as a Governor is so acting, he shall be entitled to the same salary and, save as may be otherwise provided by His Majesty in Council, the same allowances and privileges as the Governor General or that Governor.

* See Sections 7, 48.

6. Any sums required to give effect to the provisions of this Schedule shall, in the case of the Governor-General or a person acting as such, be paid out of and charged on the revenues of the Federation and, in the case of a Governor or a person acting as such, be paid out of and charged on the revenues of the Province.

FOURTH SCHEDULE.*

FORMS OF OATHS OR AFFIRMATIONS.

1. Form of oath or affirmation to be taken or made by a member of a Legislature who is a British subject :—

a member of this C ... faithful and bear tr ... irs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

2. Form of oath or affirmation to be taken or made by a member of a Legislature who is the Ruler of an Indian State :—

"I, A.B., having been elected [*or* nominated *or* appointed] a member of this Council [*or* Assembly], do solemnly swear [*or* affirm] that I will be faithful and bear true allegiance in my capacity as Member of this Council [*or* Assembly] to His Majesty the King, Emperor of India His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

3. Form of oath or affirmation to be taken or made by a member of a Legislature who is a subject of the Ruler of an Indian State :—

"I, A.B., ...
[*or* Assem ...
which I ow ...
allegiance ...
the King, E ...
charge the duty upon which I am about to enter."

4. Form of judicial oath or affirmation to be taken or made by a British subject :—

"I, A.B., having been appointed Chief Justice [*or* a judge] of the Court, do solemnly swear [*or* affirm] that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

5. Form of judicial oath or affirmation to be taken or made by a subject of the Ruler of an Indian State :—

"I, A B., having been appointed Chief Justice [*or* a judge] of the Court, do solemnly swe ... ad allegiance which I owe to C.D., his hei ... bear true allegiance in my judicial capacity to ... India, His heirs and successors, and that ... office to the best of my ability, knowledge and judgment."

FIFTH SCHEDULE.†

COMPOSITION OF PROVINCIAL LEGISLATURES.

General qualification for Membership.

1. A person shall not be qualified to be chosen to fill a seat in a Provincial Legislature unless he—

(*a*) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation or, if it is so prescribed with respect to any Province, the Ruler or a subject of any prescribed Indian State ; and

(*b*) is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age, and in the case of a seat in a Legislative Council, not less than thirty years of age ; and

(*c*) possesses such, if any, of the other qualifications specified in, or prescribed under, this Schedule as may be appropriate in his case.

* See sections 24, 67, 200, 220. † See section 61.

2. Upon the expiration of the term which he is chosen to serve as a member of a Provincial Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

Legislative Assemblies.

3. The allocation of seats in Provincial Legislative Assemblies shall be as shown in the relevant Table of Seats appended to this Schedule.

4. In the Legislative Assembly of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats—

(i) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes and, in the case of Bombay, seven shall be reserved for Marathas;

(ii) the numbers specified in the next ten columns shall be the numbers of seats to be filled by persons chosen to represent respectively—(*a*) backward areas and backward tribes; (*b*) the Sikh community, (*c*) the Muhammadan community; (*d*) the Anglo Indian community, (*e*) the European community; (*f*) the Indian Christian community; (*g*) the interests of commerce, industry, mining and planting, (*h*) landholders; (*i*) universities, and (*j*) the interests of labour; and

(iii) the numbers specified in the last five columns shall be the numbers of seats (being either general seats, Sikh seats, Muhammadan seats, Anglo-Indian seats or Indian Christian seats) reserved for women.

In the Punjab one of the landholders' seats shall be a seat to be filled by a Tumandar.

5. A Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of and particular class, shall be divided into territorial constituencies—

(i) for the election of persons to fill the general seats;
(ii) for the election of persons to fill the Sikh seats, if any;
(iii) for the election of persons to fill the Muhammadan seats;
(iv) for the election of persons to fill the Anglo-Indian seats, if any;
(v) for the election of persons to fill the European seats, if any; and
(vi) except in the case of Bihar, for the election of persons to fill the Indian Christian seats, if any,

or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

6. The required number of general seats to be reserved for members of the scheduled castes, and in the Province of Bombay for Marathas, shall be reserved by reserving for members of those castes or, as the case may be, for Marathas one or more seats in each of so many of the general territorial constituencies as may be necessary, so, however, that in each such constituency there shall be at least one unreserved seat.

7. In a Province in which any general seats are reserved for members of the scheduled castes, all members of those castes who are entitled to vote in a constituency in which any seat is so reserved shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved and no member of those castes not elected as a candidate at such an election shall be qualified to hold—

(*a*) a seat so reserved in that constituency;

(*b*) if it is so prescribed as respects that Province, any seat in that constituency.

In relation to bye-elections this paragraph shall have effect with such adaptations and modifications as may be prescribed.

8. The persons to fill the seats specified in columns fifteen to nineteen of the Table of Seats as seats to be filled by women shall be chosen in territorial constituencies, which shall be either—

(*a*) constituencies formed under paragraph five of this Schedule ; or

(*b*) constituencies specially formed for the purpose of electing women members.

9. The provisions of the Sixth Schedule to this Act shall have effect with respect to the persons who are entitled to vote at elections in the territorial constituencies mentioned in paragraphs five and eight of this Schedule.

10. In a Province in which any seats are to be filled by representatives of backward areas or backward tribes, representatives of commerce, industry, mining

s or

o fill

to be filled by representatives

ll of those seats may, if it is so

additional general seats to be

11. In the Punjab the landholder's seat to be filled by a Tumandar shall be assigned to such constituency as may be prescribed.

12. A person shall not be qualified to hold a seat in the Legislative Assembly of a Province unless—

(*a*) in the case of a seat to be filled by a woman, by a European, by an Indian Christian, by a representative of backward areas or backward tribes, by a representive of commerce, industry, mining and planting, by a representative of universities or by a representative of labour, he possesses such qualifications as may be prescribed ; and

(*b*) in the case of any other seat, he is entitled to vote in the choice of a member to fill that seat or any other seat of a similar class in that Province.

Legislative Councils.

13. The allocation of seats in the Legislative Councils of Provinces having such Councils shall be as shown in the relevant Table of Seats appended to this Schedule.

14. In the Legislative Council of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats—

(*a*) the number

(b) the numbers seats

to be filled by persons com-

munity, the European c

(*c*) the number specified in the seventh column shall be seats to be filled by persons elected by the members of the Legislative Assembly of the Province in accordance with the system of proportional representation by means of the single transferable vote ; and

(*d*) the number specified in the eighth column shall be seats to be filled by persons chosen by the Governor in his discretion.

15. A Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

(i) for the purpose of electing persons to fill the general seats :

(ii) for the purpose of electing persons to fill the Muhammadan seats ;

(iii) for the purpose of electing persons to fill the European seats ;

(iv) for the purpose of electing persons to fill the Indian Christian seats, if any,

or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

16. At an elect
in a Muhammadan
constituency shall

In the case of a Muhammadan constituency, a European constituency or an Indian Christian constituency no person shall be entitled to vote who is not, as the case may be, a Muhammadan, a European, or an Indian Christian

17. The qualifications entitling a person to vote in territorial constituencies at elections of members of a Provincial Legislative Council, and the qualifications to be possessed by members of such Councils, shall be such as may be prescribed.

18. The term of office of a member of the Legislative Council of a Province, other than a member chosen to fi [illegible] upon the first constitution of the C [illegible] by order such provision as he thi [illegible] the members then chosen, for securing that, as nearly as may be, one-third of the members holding seats of each class shall retire in every third year thereafter.

A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

General.

19 In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say,—

"a European", "an Anglo-Indian," "an Indian Christian" and "the scheduled castes" have the same meanings respectively as they have in Part I of the First Schedule to this Act;

"backward areas" and "backward tribes" mean respectively such areas and tribes as His Majesty in Council may from time to time declare to be areas and tribes to which a special system of representation is more appropriate; and

"prescribed" means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Provincial Legislature or the Governor are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph.

20 In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or, after the constitution of the Provincial Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this Schedule and the provisions of the Sixth Schedule and securing the due constitution of the Provincial Legislature and in particular, but without prejudice to the generality of the foregoing words, with respect to—

(i) the notification of vacancies, including casual vacancies, and the proceedings to be taken for filling vacancies;

(ii) the nomination of candidates;

(iii) the conduct of elections, including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are reserved for members of the scheduled classes, or in the case of Bombay for Marathas, or where certain of the seats allotted to any community must be held by a woman or by a specified type of land holder;

(iv) the expenses of candidates at elections;

(v) corrupt practices and other offences at or in connection with elections;

(vi) the decision of doubts and disputes arising out of or in connection with elections; and

(vii) the manner in which the rules are to be carried into effect.

TABLE OF SEATS.

Provincial Legislative Assemblies.

1. Province.	2. Total Seats	3. General Seats: Total of General Seats	4. General Seats: General Seats reserved for Scheduled Castes.	5. Seats for representatives of backward areas and tribes	6. Sikh Seats	7. Muhammadan Seats.	8. Anglo-Indian Seats.	9. European Seats.	10. Indian Christian Seats	11. Seats for representatives of commerce, industry, mining and planting.	12. Landholders' Seats.	13. University Seats.	14. Seats for representatives of labour.	15. Seats for Women: General.	16. Seats for Women: Sikh.	17. Seats for Women: Muhammadan.	18. Seats for Women: Anglo-Indian.	19. Seats for Women: Indian Christian.
Madras	215	146	30	1	—	28	2	3	8	6	6	1	6	6	—	1	—	1
Bombay	175	114	15	1	—	29	2	3	3	7	2	1	7	5	—	1	—	—
Bengal	250	78	30	—	—	117	3	11	2	19	5	2	8	2	—	2	1	—
United Provinces	228	140	20	—	—	64	1	2	2	3	6	1	3	4	—	2	—	—
Punjab	175	42	8	—	31	84	1	1	2	1	5	1	3	1	1	2	—	—
Bihar	152	86	15	7	—	39	1	2	1	4	4	1	3	3	—	1	—	—
Central Provinces and Berar	112	84	20	1	—	14	1	1	—	2	3	1	2	3	—	—	—	—
Assam	108	47	7	9	—	34	—	1	1	11	—	—	4	1	—	—	—	—
North-West Frontier Province	50	9	—	—	3	36	—	—	—	—	2	—	—	—	—	—	—	—
Orissa	60	44	6	5	—	4	—	—	1	1	2	—	1	1	—	—	—	—
Sind	60	18	—	—	—	33	—	2	—	2	2	—	1		—	1	—	—

In Bombay seven of the general seats shall be reserved for Marathas.
In the Punjab one of the Landholders seats shall be a seat to be filled by a Tumandar.
In Assam and Orissa the seats reserved for women shall be non-communal seats.

TABLE OF SEATS.

Provincial Legislative Councils.

1. Province	2. Total of Seats.	3. General Seats	4. Muhammadan Seats.	5. European Seats	6. Indian Christian Seats.	7. Seats to be filled by Legislative Assembly.	8. Seats to be filled by Governor
Madras . .	Not less than 54 Not more than 56	35	7	1	3	—	Not less than 8. Not more than 10
Bombay . .	Not less than 29 Not more than 30	20	5	1	—	—	Not less than 3. Not more than 4.
Bengal . .	Not less than 63 Not more than 65	10	17	3	—	27	Not less than 6. Not more than 8.
United Provinces .	Not less than 58 Not more than 60	34	17	1	—	—	Not less than 6 Not more than 8.
Bihar . .	Not less than 29 Not more than 30	9	4	1	—	12	Not less than 3. Not more than 4.
m .	Not less than 21 Not more than 22	10	6	2	—	—	Not less than 3. Not more than 4.

TABLE OF SEATS.

Provincial Legislative Assemblies.

1.	2.	3	4	5.	6	7	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.
		General Seats												Seats for Women.				
Province.	Total Seats.	Total of General Seats.	General Seats reserved for Scheduled Castes.	Seats for representatives of backward areas and tribes	Sikh Seats	Muhammadan Seats.	Anglo-Indian Seats.	European Seats.	Indian Christian Seats	Seats for representatives of commerce, industry, mining and planting.	Landholders' Seats.	University Seats.	Seats for representatives of labour.	General.	Sikh.	Muhammadan.	Anglo-Indian.	Indian Christian.
Madras	215	146	30	1	—	28	2	3	8	6	6	1	6	6	—	1	—	1
Bombay	175	114	15	1	—	29	2	3	3	7	2	1	7	5	—	1	—	—
Bengal	250	78	30	—	—	117	3	11	2	19	5	2	8	2	—	2	1	—
United Provinces	228	140	20	—	—	64	1	2	2	3	6	1	3	4	—	2	—	—
Punjab	175	42	8	—	31	84	1	1	2	1	5	1	3	1	1	2	—	—
Bihar	152	86	15	7	—	39	1	2	1	4	4	1	3	3	—	1	—	—
Central Provinces and Berar	112	84	20	1	—	14	1	1	—	2	3	1	2	3	—	—	—	—
Assam	108	47	7	9	—	34	—	1	1	11	—	—	4	1	—	—	—	—
North-West Frontier Province	50	9	—	—	3	36	—	—	—	—	2	—	—	—	—	—	—	—
Orissa	60	44	6	5	—	4	—	—	1	1	2	—	1	1	—	—	—	—
Sind	60	18	—	—	—	33	—	2	—	2	2	—	1		—	1	—	—

In Bombay seven of the general seats shall be reserved for Marathas.
In the Punjab one of the Landholders seats shall be a seat to be filled by a Tumandar.
In Assam and Orissa the sects reserved for women shall be non-communal seats.

TABLE OF SEATS.

Provincial Legislative Councils.

1. Province.	2. Total of Seats	3. General Seats.	4. Muhammadan Seats.	5. European Seats	6. Indian Christian Seats.	7. Seats to be filled by Legislative Assembly.	8. Seats to be filled by Governor.
Madras . .	Not less than 54 Not more than 56	35	7	1	3	—	Not less than 8. Not more than 10.
Bombay . .	Not less than 29 Not more than 30	20	5	1	—	—	Not less than 3. Not more than 4.
Bengal . .	Not less than 63 Not more than 65	10	17	3	—	27	Not less than 6. Not more than 8.
United Provinces .	Not less than 58 Not more than 60	34	17	1	—	—	Not less than 6 Not more than 8.
Bihar . .	Not less than 29 Not more than 30	9	4	1	—	12	Not less than 3. Not more than 4.
Assam .	Not less than 21 Not more than 22	10	6	2	—	—	Not less than 2 Not more than 4.

SIXTH SCHEDULE.*

PROVISIONS AS TO FRANCHISE.

PART I.

General.

1. There shall be an electoral roll for every territorial constituency and no person who is not, and, except as expressly provided by this Schedule, every person who is, for the time being included in the electoral roll for any such constituency shall be entitled to vote in that constituency.

2. The electoral rolls for the territorial constituencies shall be made up and from time to time in whole or in part revised by reference to such date, in this Schedule referred to as "the prescribed date," as may be directed in each case by the Governor, exercising his individual judgment.

3. No person shall be included in the electoral roll for any territorial constituency unless he has attained the age of twenty-one years and is either—

(a) a British subject; or

(b)

(c) subject to any pre

4. No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency if he is of unsound mind and stands so declared by a competent court.

5. No person shall be included in the electoral roll for a Sikh constituency, a Muhammadan constituency, an Anglo-Indian constituency, a European constituency or an Indian Christian constituency unless he is a Sikh, a Muhammadan, an Anglo-Indian, a European or an Indian Christian, as the case may be.

6. No person who is or is entitled to be included in the electoral role for any Sikh constituency, Muhammadan constituency, Anglo Indian constituency, European constituency or Indian Christian constituency in any Province shall be included in the electoral roll for a general constituency in that Province, or vote at any election to fill a general seat therein:

Provided that this paragraph shall not apply in relation to the general seats reserved for women in Assam and Orissa or the constituencies for the election of persons to fill those seats.

7. No person shall in any Province vote at a general election in more than one [illegible] each Province such provisions, if any, as may be [illegible] rovince shall have effect for the purpose of prevent- [illegible] electoral roll for more than one territorial constituency in the Province:

Provided that, in any Province in which territorial constituencies have been specially formed for the purpose of electing women members, nothing in this para- [illegible] om being included in the [illegible] territorial constituency

8. No person shall be included in [illegible] in, a territorial constituency if he is for th[illegible] the provisions of any such Order in C[illegible] rules made by the Governor as may be m[illegible] to corrupt practices and other offences in [illegible] any persons who becomes so disqualified shall forthwith be struck off all the electoral rolls for territorial constituencies in which it may be included.

9. No person shall vote at any election in any territorial constituency, if he is for the time being undergoing a sentence of transportation, penal servitude or imprisonment.

10. The following provisions shall have effect with respect to the enfranchisement of women in respect of the qualifications of their husbands—

(a) a woman who, at the date of the death of her husband, is included in an electoral roll for a territorial constituency by virtue of his qualifications shall, not-

* See schedule 5 (9).

withstanding anything in the subsequent provisions of this Schedule, continue to be on the roll *for* that *constituency* unless she remarries or becomes *disqualified under* the foregoing provisions of this Schedule for inclusion in that roll ;

(*b*) not more than one woman shall at any one time appear in the electoral rolls for the territorial constituencies in a Province in respect of the qualifications of any particular man and any question which of several women is to be selected for inclusion shall be determined in the prescribed manner :

Provided that, if a woman who is entitled by virtue of subparagraph (*a*) of this paragraph to remain on the *roll* of a territorial constituency changes her place of residence, then, if she so desires, she may, on any subsequent revision of the roll, be transferred to the roll of such other territorial constituency as may be appropriate.

11. For the purposes of this Schedule any property owned, held, or occupied or payment made by, or assessment made on, a person as a trustee, guardian, administrator or receiver or in any other fiduciary capacity, shall except as otherwise expressly provided in this Schedule, be left out of account

12 This Schedule shall have effect as if any reference therein to an officer, non-commissioned officer, or soldier of His Majesty's reguler military forces included a reference to an officer or man of any British India police force, not being an officer or man who has been dismissed or discharged from that force for disciplinary reasons, and a reference to an officer, non-commissioned officer or soldier of the Auxiliary Force (India) or the Indian Territorial Force, not being an officer, non-commissioned officer or soldier who has been dismissed or discharged from the *force for disciplinary* reasons, or has served *in* the *force* for less than *four* years.

13. (1) In this Schedule, except where the context otherwise requires—

"territorial constituency" means one of the territorial constituencies mentioned in paragraphs five and eight of the Fifth Schedule to this Act ;

"European," "Anglo-Indian," "Indian Christian" and "scheduled castes" have the *same meanings respectively as they have in Part I of the First Schedule to this Act ;*

"Indian Christian constituency" does not include any constituency which may be *formed for choosing persons to fill the Indian Christian seat in Bihar* ;

"person" does not include a body of persons ,

"prescribed," except in the phrase "the prescribed date," has the same meaning as in the Fifth Schedule to this Act ;

"previous financial year," "previous Bengali year" and "previous fasli year" mean, [illegible] fasli year immediately [illegible]

[illegible] house or building sepa- [illegible] , business, or profession ;

"literate" means, in relation to any person, able to read and write in some language or dialect selected by him, being a language or dialect in common use in some part of India ,

"cantonment" means a cantonment for the purposes of the Cantonments Act, 1924, and *"cantonment record" means a record prepared under that Act.*

(2) *Any reference in this Schedule to "urban constituencies" or "rural constituencies"* shall be construed as a reference to such territorial constituencies as may be classified as urban or rural constituencies, respectively, by an Order in Council delimiting territorial constituencies :

Provided that any such Order in Council may direct that any Anglo-Indian constituency, European constituency, or Indian Christian constituency shall be deemed to be an urban constituency for some purposes and a rural constituency for other purposes.

(3) Any reference in this Schedule to persons assessed to income-tax in any financial year shall be deemed to include a reference to any partner in a firm assessed to income tax in that year if his share of the firm's income on which income tax was so assessed is certified in the prescribed manner to have been not less than the [illegible]

[illegible] ired, pensioned or discharged officer, [illegible] orce shall be deemed to [illegible] or discharged from that force for [illegible]

(6) Any reference in this Schedule to all or any of the provisions of any Indian Act shall be construed as a reference to those provisions as amended by or under ... pealed and re-enacted with or without

... other administrative area mentioned in this Schedule are altered, any reference in this Schedule to that district or area shall thereafter be taken as a reference to the district or area as altered.

PART II.

MADRAS.

General Requirement as to Residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has resided in a house in the constituency for a period of not

...

Qualifications dependent on Taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if in the previous financial year he—

(a) paid tax under the Madras Motor Vehicles Taxation Act, 1931, for the whole of that year ; or

(b) paid for both the half years of that year to a municipality, local board or cantonment authority in the Province profession tax under the Madras City Municipal Act, 1919, the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, or the Cantonments Act, 1924 ; or

(c) paid for both the half years of that year to a municipality or cantonment

...

... of the Acts mentioned in this paragraph ; or

(f) was assessed to income tax.

Qualifications dependent on Property, &c.

... e qualified to be included in the

... year a registered landholder, inamdar, ryotwari pattadar or occupancy ryot under the Madras Estates Land Act, 1908 ; or

(b) was in and for the previous fasli year assessed to ground rent payable to the Government of the Province ; or

... ar a kanamdar or kuzhikanamdar or ... ar having fixity of tenure, each of these ... Malabar Tenancy Act, 1929 ; or

... previous fasli year a mortgagee with possession or lessee, under a registered instrument, of immovable property in the Province (other than house property) of an annual rent value, in the case of an urban constituency, of not less than one hundred rupees, and, in the case of a rural constituency of not less than fifty rupees.

4 ...

... ling paragraph shall not apply in ... ered joint inamdars, registered joint ... yots, but in relation to such persons ... previous fasli year) the following

f any joint landholders or joint holders of a whole- of one thousand rupees or upwards, then, subject Schedule, and to any overriding provisions of this Part of this Schedule one registered joint holder for every complete five hundred rupees of the annual rental of the joint holding shall be qualified to be included in the electoral roll of the appropriate territorial constituency.

(3) Where the annual assessment, rent or kist of the joint holding of joint holders of a minor inam, a ryotwari patta or an estate patta is one hundred rupees ler for every complete lified to be included in

, subject as aforesaid, be qualified to be included in the electoral roll of the appropriate territorial

Qualification by reason of Guardianship.

this Schedule.

Qualification by reason of Literacy.

6 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to be literate.

Qualification by reason of Service in His Majesty's Forces.

7. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military focres.

Additional Qualifications for Women

8. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer, or soldier of His Majesty's regular military forces ; or

(b) if her husband possesses the qualifications requisite for the purpose of this paragraph.

9. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

(a) was assessed in the previous financial year to income tax ; or

(b) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or

(c) occupied for not less than six months in the previous financial year a house in the City of Madras the annual value whereof was not less than sixty rupees, not being a house in any military or police lines ; or

(d) was assessed in the Province in the previous financial year to tax on companies , or

(e) was assessed in the Province in the previous financial year to an aggregate amount of not less than three rupees in respect of either or both of the following taxes, namely property tax or profession tax ; or

(f) is registered as a ryotwari pattadar or an inamdar of land the annual rent value whereof is not less than ten rupees ; or

(g) holds under a ryotwari pattadar or an inamdar a registered lease of lan the annual rent value whereof is not less than ten rupees ; or

(h) is registered jointly with the proprietor under section fourteen Malabar Land Registration Act, 1895, as the occupant of land the annual ren whereof is not less than ten rupees ; or

(*i*) is a landholder holding an estate the annual rent value whereof is not less than ten rupees ; or

(*j*) holds as ryot, or as tenant under a landholder, land the annual rent value whereof is not less than ten rupees.

Application necessary for Enrolment in certain cases.

10. No person shall, by virtue of subparagraph (*e*) of paragraph two, sub-para- . paragraph six, or ectoral roll of any manner by him l :

Provided that, except in relation to the original preparation of electoral rolls and 's Act, quali- sub-paragraph (*b*) of paragraph nine of this Part of this Schedule.

General Provisions as to Joint Property, &c.

held and payments an one person, shall ule. would qualify a person o the provisions of Part 'art of this Schedule, one of those persons shall be qualified in respect of the property, payment or assessment and that person shall be—

(*a*) if the property is held, or the payments or assessments made, by or on a Hindu joint family, the manager thereof ;

(*b*) if the property is held or the payments or assessments made by or on any other joint family, the member thereof authorised in that behalf by the family themselves ; the ile, l to income tax.

Interpretation, &c.

12 (1) In this Schedule, in relation to Madras—

"estate" means an estate as defined in the Madras Estates Land Act, 1908 ;

"fasli year" means a year ending on the thirtieth day of June ;

"landholder" means a person owning an estate or part of an estate and includes every person entitled to collect the rent of the whole or part of an estate by virtue of any transfer from the owner or his predecessor in title or of any order of a competent court, or of any provision of law ;

"rent value" means the value as determined in accordance with the provisions of section seventy-nine of the Madras Local Boards Act, 1920, with reference to the accounts of the previous fasli year or, in any case in which it is not possible so to determine the rent value, such value, as appears to the registration officer to be the rent value ;

"tenant" includes all perso house or land under the own- not rent is paid to the owner, be, except that it does not incl lines rent free by virtue of any office, service or employment.

(2) A person who is paying or is liable to pay the rent of a house shall be deemed to occupy it.

PART III.

BOMBAY.

General requirement as to residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he satisfies the requirements as to residence in relation to that constituency.

be deemed to satisfy

r a period of not less
r resided in a house
in the city of Bombay or in the Thana mahal or the South Salsette taluka;

(*b*) in relation to any other urban constituency, if he has for a period of not less
ear resided in a house

;
iod of not less than one
in a house in the constituency, or in a contiguous constituency of the same communal description:

Provided that a person shall be deemed to satisfy the requirement as to residence in relation to any European or Anglo-Indian territorial constituency if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the Province.

A person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency, if he was assessed during the previous financial year to income tax.

Qualification dependent on property.

3. Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

(*a*) holds in his own right, or occupies as a tenant, alienated or unalienated land or land on talukdari tenure, being land in the constituency assessed at, or of the assessable value of, not less than eight rupees land revenue; or

(*b*) is the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than eight rupees in respect of alienated land in the constituency, or

(*c*) is a khot or sharer in a khoti village in the constituency, or a sharer in a bhagdari or narwadari village in the constituency, and is responsible for the payment of not less than eight rupees land revenue; or

(*d*) occupies in the constituency as owner or tenant a house or building, situate in the city of Bombay or in any municipal borough, municipal district, cantonment or notified area, and having at least the appropriate value

In sub paragraph (*d*) of this paragraph, the expression "the appropriate value" means—

(i) in relation to a house or building situate within the city of Bombay, an annual rental value of sixty rupees,

(ii) in relation to a house or building situate outside the city of Bombay but in an area in which a tax is based on the annual rental value of houses or buildings, an annual rental value of eighteen rupees,

(iii) in relation to any other house or building, a capital value of seven hundred and fifty rupees.

Educational qualification.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation or school leaving examination of the University of Bombay, or an examination prescribed as at least equivalent to either of those examinations, or, if it is so prescribed, any other prescribed examination, not lower than a vernacular final examination

Qualification by reason of service in His Majesty's Forces.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces,

Additional qualification for women.

6. Subject as aforesaid, a person who is a woman shall also be qualified to be

her of a person who was

ajesty's regular military forces ; or

(*b*) if she is shown in the prescribed manner to be literate ; or

(*c*) if her husband possesses the qualifications requisite for the purposes of this paragraph.

7. A husband shall not be deemed to possess the qualifications requisite for the

less he satisfies the requirement as to

n question, but subject as aforesaid a

qualifications if—

(*a*) in the previous financial year, he was assessed to income tax ; or

(*b*) he is a retired, pensioned or discharged officer, non-commissioned officer

,ht or occupies as tenant alie-

assessed at, or of the assessable value of, not less than sixteen rupees land revenue in the Panch-Mahals sub division of the Broach and Panch-Mahals district or in the Ratnagiri district, or not less than thirty-two rupees land revenue elsewhere ; or

(*d*) he is the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency amounting to not less than sixteen rupees in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district and to not less than thirty-two rupees elsewhere ; or

(*e*) he is a khot or sharer in a khoti village in the constituency or a sharer in a bhagdari or narwadari village in the constituency and, in either case, is responsible for the payment, in the Panch-Mahals sub-divison of the Broach and Panch-Mahals district or in the Ratnagiri district, of not less than sixteen rupees land revenue, and, elsewhere, of not less than thirty-two rupees land revenue ; or

(*f*) he occupies as owner or tenant in the constituency a house or building situate in the city of Bombay or in a municipal borough, municipal district, cantonment or notified area and having at least the appropriate value.

In sub-paragraph (*f*) of this paragraph, the expression "appropriate value" means—

(i) in relation to a house or building in the city of Bombay, an annual rental

rental value of twenty-four rupees ;

(iii) in relation to any other house or building in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or the Ratnagiri district, a capital value of one thousand rupees ;

(iv) in relation to a house or building in any other area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of thirty-six rupees ; and

(v) in relation to any other house or building, a capital value of one thousand five hundred rupees.

Special qualification for scheduled castes.

8. Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if either—

(*a*) he is shown in the prescribed

(*b*) he was at any time during day of December next preceding the prescribe in the Province the duties of an inferior village

Provided that a person who has been dismissed for misconduct and has not been re-employed shall not by virtue of sub-paragraph (*b*) of this paragraph be qualified to be entered in any electoral roll.

h six of this Part
rial constituency
is so prescribed,

lectoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall, in relation to women qualified by virtue of their husbands' qualifications, have effect only where the husband's qualification is that mentioned in sub-paragraph (*b*) of paragraph seven of this Part of this Schedule.

Provisions as to Joint Property, &c.

paragraph, any reference in this Part
property, or to rent or land revenue in
any persons who are co-sharers in such land, property, rent or land revenue, be construed as a reference to the respective shares of those persons.

(2) Where two or more persons occupy any house, the rental value of the house shall, in relation to each of those persons, be deemed to be the rental value thereof divided by the number of those persons

(3) Where property is owned, held or occupied, or payments are made, jointly by, or assessments are made jointly on, the members of a joint family, and the pro-

themselves.

Save as aforesaid, any property owned, held or occupied, or payments made, jointly by, or assessments made jointly on, the members of a joint family shall be left out of account for the purposes of this Part of this Schedule.

(4) Nothing in this paragraph affects the provisions of Part I of this Schedule relating to partners in firms assessed to income tax.

Interpretation, &c.

11. (1) In this Schedule, in relation to Bombay—

"holder" means a person lawfully in possession of land, whether his possession is actual or not, and "hold" shall be construed accordingly ;

"tenant" means a lessee, whether holding under an instrument or under an oral agreement, and includes a mortgagee of a tenant's rights with possession, and, in relation to a house not situate in military or police lines, also includes any person occupying the house rent-free by virtue of any office, service or employment ;

"Bombay city constituency" means a constituency comprising any part of the city of Bombay

(2) The value of any machinery, furniture or equipment contained in or situate upon any house or building shall not be included in estimating for the purposes of this Part of this Schedule the rental value or the capital value of the house or building.

(3) In computing for the purposes of this Part of this Schedule the assessable value of any land, regard shall be had to the average rate of assessment on assessed land in the same village or, if there is no such land in the same village, the average rate of assessment on assessed land in the nearest village containing assessed land.

PART IV.

BENGAL.

General requirement as to residence.

1. (1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he has a place of residence in that constituency :

Provided that—

(*a*) in the case of a Calcutta constituency, provisions of this paragraph shall be deemed to be complied with in relation to any person if he has a place of residence in Calcutta and a place of business within the constituency ;

Additional qualification for women.

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(*a*) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or

(*b*) if she is shown in the prescribed manner to be literate ; or

(*c*) if her husband possesses the qualifications requisite for the purposes of this paragraph.

7. A husband shall not be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph unless he satisfies the requirement as to residense in relation to the constituency in question, but subject as aforesaid a husband shall be deemed to possess the said qualifications if—

(*a*) in the previous financial year, he was assessed to income tax ; or

ficer, non-commissioned officer

r

value of, not less than sixt

than sixteen rupees in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district and to not less than thirty-two rupees elsewhere ; or

or a sharer in a

e, is responsible

d Panch-Mahals

district or in the Ratnagiri district, of not less than sixteen rupees land revenue, and, elsewhere, of not less than thirty-two rupees land revenue ; or

(*f*) he occupies as owner or tenant in the constituency a house or building situate in the city of Bombay or in a municipal borough, municipal district, cantonment or notified area and having at least the appropriate value.

In sub-paragraph (*f*) of this paragraph, the expression "appropriate value" means—

(i) in relation to a house or building in the city of Bombay, an annual rental value of one hundred and twenty rupees

(ii) in relation to a house or

the Broach and Panch-Mahals district o

which any tax is based on the annual re

rental value of twenty-four rupees ;

(iii) in relation to any other house or building in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or the Ratnagiri district, a capital value of one thousand rupees ;

(iv) in relation to a house or building in any other area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of thirty-six rupees ; and

(v) in relation to any other house or building, a capital value of one thousand five hundred rupees.

Special qualification for scheduled castes.

8. Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if either—

(*a*) he is shown in the prescribed manner to be literate ; or

(*b*) he was at any time during the year ending on the thirty-first day of December next preceding the prescribed date a person actually performing in the Province the duties of an inferior village office, whether hereditary or not :

Provided that a person who has been dismissed for misconduct and has not been re-employed shall not by virtue of sub-paragraph (*b*) of this paragraph be qualified to be entered in any electoral roll.

valued for assessment purposes at not less than one hundred and fifty rupees per annum, or as the owner or occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than three hundred rupees per annum and paid during that year his share of the consolidated rate on the land or building ; or

(*b*) he has paid during and in respect of the previous year on his sole account and in his own name not less than twenty-four rupees either in respect of the taxes levied under Chapter XI, or in respect of the taxes levied under Chapter XII, of the Calcutta Municipal Act, 1923 ; or

(*c*) his name is entered in the municipal assessment book in respect of any land or building in Calcutta in respect of which not less than twenty-four rupees was paid in the previous year in respect of the consolidated rate.

8. In relation to an urban constituency which is not a Calcutta constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if, during and in respect of the previous year, he paid, in the municipality of Howrah, municipal taxes or fees of not less than three rupees, or, in any other municipal area or cantonment in the Province, municipal or cantonment taxes or fees of not less than one rupee, eight annas.

9. In relation to a rural constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if, during and in respect of the previous year, he paid not less than one rupee, eight annas in respect of municipal taxes or fees, or not less than one rupee in respect of road and public works cesses under the Cess Act, 1880, or not less than two rupees in respect of Chaukidari tax under the Village Chaukidari Act, 1870, or in respect of union rate under the Bengal Village Self Government Act, 1919.

10. In relation to any territorial constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if he either is a retired pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces or was assessed in the previous year to income tax, or paid before the expiration of the previous year any sum as tax under the Bengal Motor Vehicles Tax Act, 1932, in respect of that year.

Special provisions as to Darjeeling general constituency.

11. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any rural general constituency comprising any part of the Sadar, Kalimpong and Kurseong sub-divisions of the Darjeeling district if that person either—

(*a*) has paid during and in respect of the previous year rent of not less than twenty rupees for any land in the Province situate in a municipal area or for any hired building in the Province, or rent of not less than two rupees for any land in the Province not situate in a municipal area ; or

Application necessary for enrolment in certain cases.

or paragraph four of this Part any territorial constituency, y him, or, if it is so prescribed on his behalf, that he should be so included;

Special provisions as to Muhammadan women's constituency.

13. No man shall be included in the electoral roll for, or be entitled to vote at any election in, any Muhammadan constituency specially formed for the election of persons to fill the seats reserved for women.

Interpretation, &c.

14 (1) In this Schedule, in relation to Bengal,—

"Calcutta" means Calcutta as defined in paragraph 11 of section three of the Calcutta Municipal Act, 1923 ;

"a Calcutta constituency" means, subject to the provisions of this paragraph with respect to Anglo-Indian constituencies, European constituencies or Indian Christian constituencies, a constituency which comprises any part of Calcutta ;

"previous year" means the previous financial year or the previous Bengali year, whichever is appropriate in the particular case;

"Bengali year" means a year ending on the last day of the Bengali month of Chaitra.

Calcutta, shall, for all or any

deemed not to be a Calcutta constituency.

(3) Where property is held or payments are made jointly by, or assessments

Provided that this paragraph shall not apply where members of a joint family have separate accommodation and separate messing, and in any such case any reference in this Part of this Schedule to any property, payment or assessment shall be construed as a reference to each member's share of that property, payment or assessment.

PART V.

THE UNITED PROVINCES.

General requirement as to residence.

the electoral roll for

ituency.

person shall be deemed

r maintains a dwelling house therein ready for occupation in which he occasionally dwells.

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in

he—

year to income tax; or

ne constituency in which a municipal tax is in force, assessed in the previous financial year to municipal tax on an income of not less than one hundred and fifty rupees per annum.

Qualifications dependent on property.

cluded in the

of a house

twenty-four

ualified to be included in the

revenue of not less than five rupees per annum is payable; or

(b) owns land in the constituency free of land revenue, if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land, either alone or together with any land revenue payable by him as owner of other land in the constituency, amounts to not less than five rupees per annum; or

(c) is a tenant of land in the constituency in respect of which rent of not less than ten rupees per annum, or rent in kind equivalent to not less than ten rupees per annum, is payable; or

d in the constituency in respect of

rupees per annum is payable; or

ing any part of the Hill Pattis of

Pattis and, in the constituency, either is owner of a fee simple estate in those Hill Pattis, or is assessed to the payment of land revenue or cesses of any amount in those Hill Pattis, or is a Khaikar.

Educational qualification.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the upper primary examination, or an examination which is prescribed as the equivalent thereof.

Qualification by reason of service in His Majesty's forces

[illegible]

Special provision as to Shilpkars in the Hill Pattis of Kumaun.

7. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency comprising any part of the Hill Pattis of Kumaun if he is a Shilpkar resident in a village in those Hill Pattis and is in the prescribed manner selected and designated as their representative by the Shilpkar families of that village.

Additional qualifications for women.

8. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(*a*) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer of soldier of His Majesty's regular military forces ; or

(*b*) if she is proved in the prescribed manner to be literate ; or

(*c*) if her husband possesses the qualifications requisite for the purposes of this paragraph

9. In relation to any territorial constituency, a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

(*a*) he is the owner or tenant of a house or building in the constituency, the rental value whereof is not less than thirty-six rupees per annum ; or

(*b*) was in an area in which no house or building tax is in force, assessed in the previous year in the constituency to municipal tax on an income of not less than two hundred rupees per annum ; or

(*c*) owns land in the constituency in respect of which land revenue amounting to not less than twenty-five rupees per annum is payable , or

(*d*) owns land in the constituency free of land revenue, if the land revenue nominally assessed on the land for determining the amount of rates payable in reepect thereof, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than twenty-five rupees per annum ; or

(*e*) is resident in the Hill Pattis of Kumaun and, in the constituency, either owns a fee simple estate situate in those Hill Pattis or is assessed to the payment of land revenue or cesses of any amount in those Hill Pattis, or is a Khaikar ; or

(*f*) is, in the constituency, a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1926, or an under-proprietor or occupancy tenant as defied in the Oudh Rent Act, 1886, and is liable as such to rent of not

[illegible]

(*i*) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Application necessary for enrolment in certain cases.

[illegible]

al electoral roll for any rural constituency or rural constituency within three years from ·ct, no person shall by virtue of her husband requisite for the purposes of t e said para- ... roll unless application is made in the prescribed manner by her, or if it is so prescribed, on her behalf, that she should be so included.

Interpretation, &c.

11. (1) In this Schedule, in relation to the United Provinces—

"owner" does not include a mortgagee or a lessee, and "own" shall be construed accordingly;

"tenant" as respects any land in a rural area means a tenant as defined in the Agra Tenancy Act, 1926, or the Oudh Rent Act, 1886, as the case may be, and does not include a sub-tenant, and as respects any house or building means a person who occupies it on payment of rent, or in the case of a house, not situate in military or police lines, a person who occupies it rent free by virtue of any office, service or employment.

"under-proprietor" means an under-proprietor as defined in the Oudh Rent Act, 1886;

'Khaikar" means a person recorded as such in the records of rights of land in the Hill Pattis of Kumaun;

"building" means a building as defined in the United Provinces Municipalities Act, 1916;

"rental value" means the value of a house or building based on the amount of annual rent;

"municipal tax" and "house or building tax," mean the taxes respectively known by those names imposed under the United Provinces Municipalities Act, 1916, the United Provinces Town Areas Act, 1914, and the Cantonments Act, 1924;

"urban area" means a municipality or notified area as defined in subsection (9) of section two, and subsection (2) of section three hundred and thirty-seven of the United Provinces Municipalities Act, 1916, or a town area as defined in the United Provinces Town Areas Act 1914 ... ent;

an urban area.

... or, if there is no manager, the he family, and in other cases ... or tenancy concerned.

PART VI.

THE PUNJAB.

General requirements as to residence.

the electoral roll for a territ- uency.

... proof that a person owns a family dwelling-house or a share in a family dwelling house in a constituency and that that house has not during the twelve months preceding the prescribed date been let on rent either in whole or in part shall be sufficient evidence that that person is resident in the constituency.

Qualifications dependent on taxation.

and to any overriding qualified to be included ... previous financial year either—

(*a*) he was assessed to income tax, or was in the Province assessed in respect of any direct municipal or direct cantonment tax to an amount of not less than fifty rupees; or

to an amount
to any other
nt of not less
than two rupees.

Qualifications dependent on Property, etc.

ified to be included in the

to land revenue of not less

of the Punjab
land revenue of

not less than
ten rupees per annum ; or

(*d*) is a tenant of not less than six acres of irrigated land in the constituency, or of not less than twelve acres of unirrigated land in the constituency ; or

(*e*) has throughout the twelve months immediately preceding the prescribed date owned immovable property in the Province of the value of not less than two thousand rupees *or of an annual rental value of not less than sixty rupees*, not being land assessed to land revenue ; or

(*f*) has throughout the twelve months preceding the prescribed date occupied as tenant in the constituency immovable property of an annual rental value of not less than sixty rupees, not being land assessed to land revenue ; or

(*g*) *is a zaildar, inamdar, sufedposh or lambardar in the constituency :*

Provided that the provisions of sub-paragraph (*d*) of this paragraph shall be deemed to be complied with in the case of a person who is the tenant of both irrigated and unirrigated land in the constituency if the sum of the area of that irrigated land and half the area of that unirrigated land is not less than six acres.

Educational Qualification.

ed in the
d manner

Qualification by reason of service in His Majesty's Forces.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier in His Majesty's regular military forces.

Additional Qualification for Women.

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency *if she is the pensioned*
as an officer, non-commissioned
ary forces, or if she is shown in
and possesses the qualifications

qualifications requisite for the

x, or was
tax to an

officer or

(*c*) has throughout the twelve months preceding the prescribed date owned immovable property in the province of the value of not less than four thousand rupees or of an annual rental value of not less than ninety-six rupees, not being land assessed to land revenue ; or

(*d*) has throughout the twelve months preceding the prescribed date occupied as a tenant immovable property in the constituency of an annual rental value of not less than ninety-six rupees, not being land assessed to land revenue ; or

(e) is the owner of land in the Province assessed to land revenue of not less than twenty-five rupees per annum ; or

(f) is the assignee of land revenue in the Province amounting to not less than fifty rupees per annum ; or

(g) is a tenant or lessee under the terms of a lease for a period of not less than three years of Crown land in the constituency for which an annual rent of not less than twenty-five rupees is payable ; or

(h) is a tenant with a right of occupancy as defined in Chapter II of the ... ed to land revenue of not less

... of this paragraph, where the ... om harvest to harvest, the ... nual average of the amounts ... the prescribed date falls.

Special Qualifications for Scheduled Castes.

8. Subject as aforesaid, a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

(a) is shown in the prescribed manner to be literate ; or

(b) has throughout the twelve months preceding the prescribed date owned immovable property in the Province of a value of not less than fifty rupees, not being land assessed to land revenue, or has throughout that period owned malba of a house in the Province of not less than that value ; or

(c) has, throughout the twelve months preceding the prescribed date, occupied as tenant immovable property in the constituency of an annual rental value of not less than thirty-six rupees.

Application necessary for Enrolment in certain cases.

9. No person shall, by virtue of paragraph four, paragraph six or sub-paragraph (a) of paragraph eight of this Part of this Schedule, be included in the electoral roll for any territorial constituency unless application is made by him in the prescribed manner that he should be so included.

Interpretation, etc.

10. (1) In this Schedule, in relation to the Punjab—

"annual rental value" in relation to immovable property means the amount for ... if any, is actually

... ection (6) of section ... of fluctuating land ... assessed on land subject to river action, the annual amount thereof shall be taken to be the average amount of land revenue paid during the three agricultural years preceding that in which the prescribed date falls ;

"land records" means attested records of rights or attested annual records of rights maintained under Chapter IV of the Punjab Land Revenue Act, 1887, and includes an order finally sanctioning a mutation duly passed under that Chapter ;

"agricultural year" means a year ending on the thirtieth day of September ;

"owner" does not include a mortgagee ;

"tenant" in relation to agricultural land means a tenant as defined in the ... y means a person who ... ntract, would be, liable ... military or police lines ... occupying the house rent free by virtue of any office, service or

... "lambardar" mean respectively persons ... for the time being in force under the ... do not include a substitute appointed

... this Schedule the period ... perty, any period during ... by inheritance shall be taken into account.

(3) Any reference to immovable property, not being land assessed to land revenue, includes a reference to any building situated on land assessed to land revenue.

(4) Where property is held or payments are made by, or assessments are made [illegible]

[illegible] adopted as the unit for deciding whether the requisite qualification exists, and, if it does exist, the person qualified shall be the manager of the family.

(5) Subject to the provisions of the last preceding sub-paragraph, any reference in this Schedule to land assessed to land revenue, to other immovable property, to a tenancy or a lease of land assessed to land revenue or to assigned land revenue shall, in relation to any persons who are co-sharers in such land, property tenancy or lease or land revenue, be construed as a reference to the respective shares of those persons :

Provided that the share of any person under the age of twenty-one years shall, if his father is alive and a co-sharer, be deemed to be added to the share of his father, and, if his father is dead and his eldest surviving brother is a co-sharer, be deemed to be added to the share of that brother.

(6) Not more than one person shall be qualified in respect of the occupation of a building occupied in common by two or more persons and any question which of those persons is to be qualified shall be determined in the prescribed manner.

PART VII.

BIHAR.

General requirement as to residence.

1. (1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless he resides in the constituency

(2) A person shall be deemed to reside within a constituency if he ordinarily lives therein, or has his family dwelling therein which he occasionally occupies, or maintains therein a dwelling house ready for occupation which he occasionally occupies

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency, if he was assessed during the previous financial year to income tax or was, in the previous financial year, assessed to an aggregate amount of not less than one rupee eight annas in respect of municipal tax or is assessed, otherwise than in the Santal Parganas, to chaukidari tax of an annual amount of not less than nine annas :

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if there were substituted for the reference to nine annas a reference to twelve annas

Qualifications dependent on property.

[illegible] so be qualified to be included in the [illegible] he either—

[illegible] n the notified area of Jamshedpur in respect of which he is liable to pay an annual rent of not less than twenty-four rupees ; or

(b) holds land in the Province, not situated in the notified area of Jamshedpur or an area in which municipal tax or chaukidari tax is levied, for which he is liable to pay a rent of not less than six rupees per annum or a local cess of not less than three annas :

Provided that in relation to land within the Santal Parganas this paragraph shall have effect as if there were substituted for the reference to six rupees, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, a reference to five rupees, and after a reference to three rupees eight annas.

Educational qualification.

examination.

Qualification by reason of service in His Majesty's Forces.

Additional qualification for women.

orces, or if her husband possesses the
is paragraph, or if she is shown in the

Provided that, in relation to the original preparation of electoral rolls and revi-
commencement of Part III of this Act, this
ds "or if she is shown in the prescribed
from.

isite for the

d officer or

d in the Province to an aggre-
municipal tax; or

(*d*) he is assessed in the Province, otherwise than in the Santal Parganas, to an annual sum of not less than two rupees eight annas in respect of chaukidari tax, or

(*e*) he occupies land or buildings situate in the notified area of Jamshedpur in respect of which he is liable to pay rent of not less than one hundred and forty four rupees per annum, or

(*f*) he holds land in the Province, not situated in the notified area of Jamshedpur or an area in which municipal tax or chaukidari tax is levied, in respect of which he is liable to pay rent of not less than twenty-four rupees per annum or a local cess of not less than twelve annas.

Special provisions as to Muhammadan women's constituency.

8. No man shall be included in the electoral roll for, or be entitled to vote at any election in any Muhammadan constituency specially formed for the election of a person to fill the seat reserved for women.

Interpretation, etc.

9. (1) In this Schedule, in relation to Bihar—

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, persons other than the members of a joint family, all such per-

whether the requisite quali-
provisions of Part I of this
f this Schedule, one and one
rsons to be qualified shall be

PART VIII.

THE CENTRAL PROVINCES AND BERAR.

General requirements as to residence.

1. (1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless, in the case of a rural constituency, he has a place of residence in the constituency, and, in the case of an urban constituency, he has a place of residence in, or within two miles from the boundary of, the constituency.

person shall be deemed to

ot less than one hundred and eighty days in the aggregate during the previous financial year ; or

(*b*) he has maintained a house within the area for an aggregate period of not less than one hundred and eighty days during that year as a dwelling for himself in charge of his dependants or servants, and has visited that house during that year.

Qualifications dependent upon taxation.

2 Subject to the overriding provisions of this Part o included in the electoral roll for a nal year he either—

(*a*) was assessed to income tax , or

(*b*) was, in an urban area in the Province in which a municipal tax based on haisiyat is imposed, assessed to such a tax on a haisiyat of not less than seventy-five rupees.

Qualifications dependent on property, &c.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of a territorial constituency if he either—

an estate or
ipees ; or
proprietary
agricultural
assessable land

and of which the

(*d*) is, in an urban area in the Province, the owner or tenant of a building, the annual rental value of which is not less than six rupees ; or

(*e*) is a watandar patel or a watandar patwari holding office, or a registered deshmukh or deshpandia or a lambardar.

Educational qualification.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved, in the prescribed manner, to

study for a
equivalent
lower than

ovisions of
son if he is
ie State of

Hyderabad prescribed as at least equivalent to an examination the passing of whic qualifies persons under those provisions.

Qualification by reason of service in His Majesty's forces and the forces of His Exalted Highness the Nizam of Hyderabad.

5. (1) Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

ed to be included in the e is a retired, pensioned the regular forces of His pensioned or discharged

Additional qualification for women.

ll also be qualified to

a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces;

(*b*) if she is proved in the prescribed manner to be literate or to be the holder of a primary school certificate; or

(*c*) if her husband possesses the qualifications requisite for the purposes of this paragraph.

(2) Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency in Berar if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or an officer or man of the Hyderabad State Police.

7. (1) qualifications requisite for the purposes of

haisiyat is imposed, assessed in the previous financial year to such a tax on a haisiyat of not less than four hundred rupees.

(2) In relation te any territorial constituency in Berar, a husband shall also be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or a retired, pensioned or discharged officer or man of the Hyderabad State Police.

Additional qualification for members of scheduled castes.

8. Subject as aforesaid, a member of a scheduled caste shall also be qualified to be included in the electoral roll for any territorial constituency if he is a kotwar, a jaglia, or a village mahar holding office.

Application necessary for enrolment in certain cases.

9. No person shall, by virtue of p
by virtue of being a pensioned widow
a primary school certificate, or of
officer, soldier or man of any force, be
torial constituency unless application is made in the prescribed manner by him or, if it is so prescribed, on his behalf, that he should be so included.

Interpretation, &c.

10. (1) In this Schedule, in relation to the Central Provinces and Berar—

"building" means any structure or enclosure, whether used as a human dwelling or otherwise, and includes a part of a building ;

"estate," "mahal," "malik makbuza," "kamil jama," "sir land" and "khudkasht" have the meanings respectively assigned to them in section two of the Central Provinces Land Revenue Act, 1917 ;

"estate or mahal" includes a part of an estate or a mahal ;

"lambardar" means a lambardar appointed under the provisions of the Central Provinces Land Revenue Act, 1917 ;

"land revenue" means land revenue as defined in section fifty-six of the Central Provinces Land Revenue Act, 1917, and in section forty-nine of the Berar Land Revenue Code, 1928 ,

"Proprietor" includes an inferior proprietor and a plot proprietor, but does not include a transferee of proprietary rights in possession, or a mortgagee with possession ,

"raiyat" means the holder of a survey number as defined in subsection (18) of section two of the Central Provinces Land Revenue Act, 1917, and includes the holder of land recorded in the land records maintained by the Provincial Government as milkiyat sarkar ;

[illegible] being a deshmukh or [illegible] pensions maintained [illegible] pension or share of a [illegible]

[illegible] means the amount for which [illegible] ure, if any, is actually let, or [illegible]

"tenant," in relation to agricultural land, means a tenant as defined in subsection (II) of section two of the Central Provinces Tenancy Act, 1920, but does not include a sub-tenant, and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue of any office, service or employment ,

"thekadar" includes a gaontia and a protected headman ;

"hold" in relation to land or an estate or mahal, means to be recorded in the records maintained under Chapter V of the Central Provinces Land Revenue Act, 1917, or Chapter X of the Berar Land Revenue Code, 1928, or, in the case of the melghat Taluq of the Amraoti District, in the land records prescribed by the Provincial Government, as the person in possession of the land, estate or mahal ,

"urban area" means a municipality, notified area or cantonment, and includes the Government gun carriage factory estate at Jubbulpore and any prescribed railway settlements ;

"watandar patel" and "watandar patwari" mean respectively a patel and a patwari appointed under section five of the Berar Patels and Patwaris Law, 1900.

(2) For the purposes of this Part of this Schedule ante-alienation tenants as defined in section seventy-two of the Berar Land Revenue Code, 1928, and section forty of the Berar Alienated Villages Tenancy Law, 1921, permanent tenants as defined in section forty-seven of the Berar Alienated Villages Tenancy Law, 1921, and tenants of antiquity as defined in section seventy three of the Berar Land Revenue Code, 1928, shall be deemed to hold agricultural land in other than tenancy right.

(3) Subject to the provisions of the next succeeding sub-paragraph, the provisions of this Part of this Schedule shall have effect in relation to any persons who are co sharers in, or in a tenancy or lease of, land or other immovable property as if the respective shares of those persons in the land, property, tenancy or lease were held separately.

(4) Where property is held or payments are made jointly by the members of a joint family or a tax is assessed jointly on the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof and in other cases the member authorised in that behalf by the family themselves.

(5) Any reference in this Part of this Schedule to a retired, pensioned or di charged officer or man of the Hyderabad State Police shall be deemed no include a reference to any person who has been dismissed or discharged fro police for disciplinary reasons.

PART IX.

ASSAM

General requirement as to residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has a place of residence in the constituency, and a person shall be deemed to have a place of residence in a constituency if he ordinarily lives in the constituency or has his family dwelling place in the constituency and occasionally occupies it :

Provided that in relation to the European constituency the provisions of this paragraph shall be deemed to be complied with in relation to any person if he is actually employed anywhere in Assam but is absent from Assam on leave from his employment.

Qualifications dependent on taxation.

. and to any overriding qualified to be included previous financial year,

he either—

(a) was assessed to income tax ; or

(b) was in the constituency assessed in respect of municipal or cantonment

the district of Goalpara, to a tax of not less than eight annas under the Village Chaukidari Act, 1870

Qualifications dependent on property.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if, in the constituency, he either—

(a) is the owner of land in the Province the land revenue on which has been assessed or is assessable at not less than seven rupees eight annas per annum ; or

(b) is liable to pay a local rate of not less than eight annas per annum ; or

(c) throughout the previous financial or previous Bengali year held from a landlord land in any of the following districts, that is to say, Lakhimpur, Sibsagar, Darrang, Nowgong, or Kamrup, or in the Garo Hills, and paid to the landlord rent to the value of not less than seven rupees eight annas in respect of that land :

Provided that for the purposes of this paragraph land situate, and local rates levied, in the districts of Sylhet, Cachar and Goalpara shall be left out of account.

Educational qualification.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the middle school leaving certificate examination or any other examination prescribed as at least equivalent thereto.

Qualification by reason of service in His Majesty's forces.

be qualified to be included in the f he is a retired, pensioned or dis- n soldier of His Majesty's regular

Additional qualification for women.

ualified to be be pensioned issioned officer or if she is ses the quali-

7. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he—

(a) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces or the Assam Rifles ; or

(b) was in the previous financial year assessed to income tax ; or

(c) was in the previous financial year assessed in the constituency in respect of municipal or cantonment rates or taxes—

or

annas , or

or

ar to a tax of

r in the district of Sylhet, the district of Cachar or the district of Goalpara to a tax of not less than one rupee under the Village Chaukidari Act, 1870 , or

(f) elsewhere than in the said districts, is the owner of land in the constituency, the land revenue on which has been assessed or is assessable at not less than fifteen rupees per annum ; or

(g) is liable to pay a local rate in the constituency of not less than one rupee per annum.

Application necessary for enrolment in certain cases.

8 No person shall, by virtue of paragraph six of this Part of this Schedule, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by her, or, if it is so prescribed, on her behalf, that

ion of electoral rolls and of Part III of this Act, of their husbands' qua- is that mentioned in edule.

Special provisions as to seat reserved for women.

relation to any constituency seat reserved for women— ll for the constituency, or be

es any part of Shillong, any uency" shall be construed as e jurisdiction of the Shillong

Munic

India,

as incl

or that authority in the exercise of any jurisdiction exercised by them in relation to areas outside British India.

Special provisions as to backward areas and backward tribes.

10. No person who is entitled to vote in the election of a person to fill any of the backward tribes, or is en- ncy formed for the purpose al roll for any territorial y specially formed for the

Interpretation, &c.

under Chapter XII of the Assam

t day of the Bengali month of Chaitra ;

"local rate" means the local rate assessed under the Assam Local Rates Regulation, 1879 ;

"landlord" means a person under whom another person holds land immediately, but does not include the Government ;

PART X.

THE NORTH WEST FRONTIER PROVINCE.

General requirement as to residence.

1. No person shall be qualified to be included in the electoral roll for any territorial constituency unless he is resident in the constituency.

For the purposes of this Part of this Schedule proof that a person or, in the case ... or a share in a family dwel- ... not during the twelve months ... n whole or in part shall be sufficient evidence that that person is resident in the constituency.

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if during the previous financial year, he was either—

(*a*) assessed to income tax; or

(*b*) assessed in the Province in respect of any direct municipal or cantonment tax to an amount of not less than fifty rupees; or

(*c*) In the case of a rural constituency, assessed to district board tax of not less than two rupees.

Qualifications dependent on rights in property, &c.

... in the ... able property of the value of not less than six hundred rupees, not being land assessed to land revenue; or

(*b*) has for the twelve months preceding the prescribed date occupied as a tenant immovable property of an annual rental value of not less than forty-eight rupees, not being land assessed to land revenue, or

(*c*) is the owner of not less than six acres irrigated land or not less than twelve acres unirrigated land or of land assessed to land revenue of not less than five rupees per annum; or

(*d*) is the assignee of land revenue amounting to not less than ten rupees per annum; or

(*e*) has been for the whole of the preceding fasli year the tenant of not less than six acres of irrigated land or not less than twelve acres unirrigated land; or

(*f*) is a zaildar, inamdar or lambardar ...

...-paragraph (*e*) of ... ay be, to have ... as the case may ... f the area of that ... han six acres.

Educational Qualification.

... ed— ... in the pres- ... examination ... in the pres- cribed manner to have passed the primary (fourth class) examination or any other examination prescribed as at least equivalent to that examination.

Qualification by reason of service in His Majesty's Forces.

ed to be included in the
, pensioned or discharged
regular military forces.

Additional qualification for women.

6. Subject as aforesaid, a person who is woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned

prescribed manner to be literate :

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words "or if she is shown in the prescribed manner to be literate" were omitted therefrom.

7. A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if either—

(*a*) he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or

(*b*) he has an income of at least forty rupees per month ; or

(*c*) he was during the previous financial year assessed to income tax ; or

(*d*) in relation to an urban constituency, he was, during the previous financial year, assessed in the Province in respect of any direct municipal or cantonment tax to an amount of not less than fifty rupees ; or

(*e*) in relation to a rural constituency, he was during the preceeding financial year assessed in the Province in respect of any cess, rate or tax to an amount of not less than four rupees per annum payable to the district board ; or

(*f*) he owned throughout the twelve months preceding the prescribed date immovable property in the Province of the value of not less than six hundred rupees, not being land assessed to land revenue ; or

(*g*) he occupied as a tenant throughout the twelve months preceding the prescribed date immovable property in the Province of an annual rental value of not less than forty-eight rupees, not being land assessed to land revenue ; or

(*h*) he is the owner of land in the Province assessed to land revenue of not less than ten rupees per annum ; or

(*i*) he is an assignee of land revenue in the Province amounting to not less than twenty rupees per annum ; or

(*j*) he is a tenant or lessee, under the terms of a written lease for a period of not less than three years, of land in the Province assessed to land revenue of not less than ten rupees per annum , or

(*k*) he is a tenant with a right of occupancy, as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land in the Province assessed to land revenue of not less than ten rupees per annum.

Application necessary for enrolment in certain cases.

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Interpretation, &c.

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s actually

ction three of the Punjab Land Revenue Act, 1887, and, in the case of fluctuating land revenue or land revenue assessed on land subject to river action, the annual amount thereof shall be taken to be the average amount paid during the three years preceding the prescribed date ;

"zaildar," "inamder" and "lambardar" mean respectively persons appointed as such in accordance with rules for the time being in force under the Punjab Land Revenue Act, 1887, and do not include a substitute appointed temporarily for any such person ;

tenant as defined in the Punjab
, means a person who holds that
ntract, would be, liable to pay rent
therefor, and in relation to a house not situate in military or police lines includes any

ing
vas
owned by a person from whom he derives title by inheritance shall be taken into account.

evenue,

ents are
made jointly on the members of a joint family, the family shall be adopted as the

in relation to any persons who are co-sharers in such land, property, tenancy, or lease, or land revenue, be construed as a reference to the respective shares of those persons :

Provided that the share of any person under the age of twenty-one years shall, if his father is alive and a co-sharer, be deemed to be added to the share of his father, and, if his father is dead and his eldest surviving brother is a co-sharer, be deemed to be added to the share of that brother.

PART XI.

Orissa.

General requirements as to residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he is resident in the constituency, and a person shall be
lives therein or has his
ntains therein a dwel-

Qualifications applicable to all territorial constituencies.

to have passed the matriculation examination of any prescribed university or an examination prescribed as at least equivalent to any such examination, or, if it is so prescribed, any other prescribed examination not lower than a final middle school examination.

ll also be qualified to be

of a person who was an
officer, non-commissioned officer or soldier of His Majesty's regular military forces ; or

officer, non-com-
or in the previous
m of not less than
three rupees in respect of municipal taxes ; or

(c) if she is shown in the prescribed matter to be literate ;

and revi-
s Act, this

Special provisions as to the districts of Cuttack, Puri, Balasore and the sub-division of Angul

6. Subject as aforesaid, a person shall also be qualified to be included in the
ne districts of Cuttack

of not less than nine annas ; or

(*b*) holds land in the Province, not situated in a municipality or an area in which chaukidari tax is levied, for which he is liable to pay rent or land revenue of not less than two rupees per annum or a local cess of not less than one anna :

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if there were substituted for the reference to nine annas a reference to twelve annas.

7. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any such constituency as is mentioned in the last preceding paragraph if she is the wife of any person who either—

(*a*) is assessed to chaukidari tax of an annual amount of not less than two rupees, eight annas ; or

(*b*) holds land in the Province, not situated in a municipality or in an area in which chaukidari tax is levied, for which he is liable to pay rent or land revenue of not less than sixteen rupees per annum or local cess of not less than eight annas.

Special provisions as to the districts of Ganjam and Vizagapatam and the Khondmals sub-division.

8. Subject as aforesaid, a person, not being a member of a backward tribe, shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the districts of Ganjam and Vizagapatam or in the Khondmals sub-division—

(*a*) if in either of those districts or in that sub-division he holds land, not situate in a municipality, in respect of which he is liable to pay rent or land revenue of not

visions, if, being a
s or in that sub-
hich he is liable to

Special provision as to the district of Sambalpur.

9. Subject as aforesaid, a person shall be qualified to be included in the electoral roll for any constituency situated wholly or partly in the district of Sambalpur if, in that district, he either—

(*a*) holds land, not situated in a municipality or a sanitation area, for which he is liable to pay rent or land revenue of not less than one rupee per annum or village cess of not less than one anna ; or

(*b*) is in occupation of a house for which he is liable to pay rent of not less than six rupees per annum, not being a house in a municipality or sanitation area ; or

(*c*) is assessed to an annual tax of at least twelve annas under the Central Provinces Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1920 ; or

(*d*) is a village servant holding office as a jhankar, ganda, kotwar, jagalia or mahar, and holds land recorded in the record of rights as service land :

Provided that in relations to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if for the references in sub-paragraph (*a*) thereof to one rupee and one anna there were substituted respectively references to two rupees and two annas.

10. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the district of Sambalpur if she is the wife of a person who, in that district, either—

(a) holds land not situated in a municipality or a sanitation area, for which he is liable to pay rent or land revenue of not less than sixteen rupees per annum or village cess of not less than eight annas ; or

(b) is in occupation of a house for which he is liable to pay an annual rent of ... e in a municipality or sanitation area ; or ... less than ten rupees under the Central ... tral Provinces Village Sanitation and

Interpretation, &c.

11. (1) In this Schedule, in relation to Orissa—

"backward tribe" has the same meaning as in the Fifth Schedule to this Act ;

"municipality" means an area constituted a municipality under the Bihar and Orissa Municipal Act, 1922, or the Madras District Municipalities Act, 1920, or an area in respect of which a notification has issued under section three hundred and eighty-eight of the Bihar and Orissa Municipal Act, 1922 ;

"municipal tax" means a tax or rate levied in a municipality ;

"sanitation area" means an area administered under the Central Provinces Village Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1920 ;

"chaukidari tax" means a tax levied under the Village Chaukidari Act, 1870, under section thirty of the Bihar and Orissa Village Administration Act, 1922, or under section forty-seven of the Angul Laws Regulation, 1913.

(2) Where property is held or payments are made jointly by, or assessments ... s the ... ; the ... ereof,

... those persons shall be qualified, and the persons to be qualified shall be selected in the prescribed manner.

PART VII.

Sind.

General requirement as to residence.

1. No person shall be qualified to be included in the electoral roll for a territorial constituency unless he satisfies the requirement as to residence in relation to that constituency.

For the purposes of this Part of this Schedule a person shall be deemed to satisfy the requirement as to residence—

... , if he has for a period of not less than ... financial year resided in a house in ... undary thereof :

... than one hundred and eighty days in the previous financial year, resided in a house in the Province.

A person is deemed to reside in a house if he sometimes uses it as a sleeping ... he is ... ty to

Qualifications dependent on taxation.

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency, if he was assessed during the previous financial year to income tax.

Qualifications dependent on property.

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

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uld

(*b*) cultivates as a Hari alienated or unalienated land in the consituency on which in the revenue year preceding that in which the prescribed date falls an assessment of not less than sixteen rupees land revenue has been leviable, or would have been leviable, if the land had not been alienated ; or

(*c*) is the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than eight rupees in respect of alienated land in the constituency , or

(*d*) occupies as owner or tenant in the constituency a house or building situate
nicipal district, cantonment

one Hari for every sixteen
r sub-paragraph (*b*) of this
question which of several Haris shall
graph in respect of any land shall be

, the expression "the appropriate value" means—

(*i*) in relation to a house or building situate within the city of Karachi, an annual rental value of thirty rupees ;

(*ii*) in relation to a house or building situate outside the city of Karachi but in an area in which a tax is based on the annual rental value of houses or buildings, an annual rental value of eighteen rupees ;

(*iii*) in relation to any other house or building, a capital value of seven hundred and fifty rupees ;

Educational qualification.

4 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation or school leaving examination of the university of Bombay or an examination prescribed as at least equivalent to either of those examinations or, if it is so prescribed any other prescribed examination, not being lower than a vernacular final examination.

Qualification by reason of service in His Majesty's forces.

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

Additional qualification for women.

6. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency, if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces, or if she is proved in the prescribed manner to be literate, or if her husband possesses the qualifications requisite for the purposes of this paragraph.

7 A husband shall not be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph unless he satisfies the requirement as to residence in relation to the constituency in question, but, subject as aforesaid a husband shall be deemed to possess the said qualifications if he—

(*a*) was in the previous financial year assessed to income tax ; or

of the five revenue years preceding that in which the prescribed date falls, an assessment of land revenue amounting, in the Upper Sind Frontier district, to not less th

sixteen rupees, and, elsewhere, to not less than thirty-two rupees, has been paid, or would have been paid if the land had not been alienated ; or

(*d*) is the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency, amounting, in the Upper Sind Frontier district, to not less than sixteen rupees, and, elsewhere, to not less than thirty two rupees ; or

(*e*) occupies as owner or tenant in the constituency a house or building situate in the city of Karachi or in a municipal borough, municipal district, cantonment or

al

(*ii*) in relation to a house or building situate in any other area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of thirty-six rupees ; and

(*iii*) in relation to any other house or building, a capital value of one thousand five hundred rupees.

Application necessary for enrolment in certain cases.

8. No person shall by virtue of parapraph four or paragraph six of this Part of this Schedule be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him, or if it is so prescribed, on his behalf that he should be so included.

Provisions as to Joint Property, &c.

paragraph, any reference in this Part property ; or to rent or land revenue to any persons who are co-shares in such land, property, rent or land revenue, be construed as a reference to the respective shares of those persons.

(2) Where two or more persons occupy any house, the rental value of the house shall, in relation to each of those persons, be deemed to be the rental value thereof divided by the number of those persons.

(3) Where property is owned, held or occupied, or payments are made jointly by, or assessments are made jointly on, the members of a joint family, and the property, payments or assessments would qualify a person if they had been owned, held, occupied or made by or o

I of this Schedule and to any over

member of the family shall be

assessment, and that person sl

manager thereof and in other

family themselves.

Save as aforesaid any property owned, held or occupied or payments made jointly by, or assessments made jointly on, the members of a joint family, shall be left out of account for the purposes of this Part of this Schedule.

affects the provisions of Part I of this Schedule to income tax or the provisions of this Part of

Interpretation, &c.

10 d—

under an Instrument or under an oral a tenant's rights with possession, and, in relation to a house not situate in military or police lines, also includes any person occupying the house rent free by virtue of any office, service or employment ;

"holder" means a person lawfully in possession of land, whether his possesion is actual or not, and "hold" shall be construed accordingly.

(2) The value of any machinery, furniture or equipment contained in or situate upon any house or building shall not be included in estimating for the purposes of this Part of this Schedule the rental value or the capital value of the house or building.

(3) In computing for the purposes of this Part of this Schedule the assessable value of any land regard shall be had to the average rate of assessment on assessed land, in the same village or, if there is no such land in the same village, the average rate of assessment on assessed land in the nearest village containing assessed land.

SEVENTH SCHEDULE.

Legislative Lists.

LIST I.

FEDERAL LEGISLATIVE LIST

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments ; ... Majesty, but are attached to or ... or air forces borne on the Ind ... eventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works ; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and within British India, the delimitation of such areas.

... reements with other ... accused persons to

... adcasting and other

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

1 ... for tl ... but, ... save ... *federated State held by virtue of any lease or agreement with that State, subject to* the terms of that lease or agreement

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or *financed by* the Federation.

12. Federal agencies and institutes for the following purposes, that is *to say, for* research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India ; Federal meteorological organisations.

15. Ancient and historical monuments ; archæological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British *subjects domiciled in the United Kingdom ; pilgrimages to places beyond India.*

18. Port quarantine ; seamen's and marine hospitals, and hospitals connected with port quarantine.

* Se. sections 100, 104.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

nd delimitation of such ports,
erein.

of ærodromes, regulation and

and other provision for the

26 Carriage of passengers and goods by sea or by air.
27. Copyright, inventions, designs, trademarks and merchandise marks.
28. Cheques, bills of exchange, promissory notes and other like instruments.
29. Arms; firearms; ammunition.
30. Explosives.
31. Opium, so far as regards cultivation and manufacture, or sale for export.
32 Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

poration, regulation and winding-up of
rance and financial corporations, but
d by a Federated State and carrying
erative societies, and of corporations,
ed to one unit.
development under Federal control is
e public interest.
nes and oilfields.
d mineral development to the extent
nder Federal control is declared by
... to be expedient in the public interest.

only within that State.

belong-
or Chief
exercise
the Pro-
vers and
eas out-
side that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42.
43.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption ;

(b) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

(c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. *Naturalisation.*

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as it expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Feder-

a

of agricultural land, of

ssory

es on railway fares and freights

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

List II.

Provincial Legislative List.

Majesty's naval, military or of justice ; constitution and fees taken therein ; preven- ice of public order ; persons subjected to such detention.

2. Jurisdiction and powers of all Courts except the Federal Court, with respect to any of the matters in this list ; procedure in Rent and Revenue Courts.

3 Police, including railway and village police.

4 Prisons, reformatories Borstal institutions and other institutions of a like nature, and persons detained therein ; arrangements with other units for the use of prisons and other institutions

5. Public debt of the Province

6. Provincial Public Services and Provincial Public Service Commissions

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9 Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

documents before Committees of the Provincial Legislature.

13 Local government, that is to say, the constitution and powers of municipal corporations, improvement trust, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways; subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province; markets and fairs; money lending and money lenders

28. Inns ands innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor; unemployment.

33. The incorporation, regul[illegible] than corporatians specified in List I;

[illegible] and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India.

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(*c*) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

41.

42.

43.

44. [illegible] mposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.
46. Taxes on professions, trades, callings and employments.
47. Taxes on animals and boats.
48. *Taxes on the sale of goods and on advertisements.*
49. Cesses on the entry of goods into a local area for consumption, use or sale therein.
50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
52. Dues on passengers and *goods carried on inland waterways.*
53. Tolls.
54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III.

CONCURRENT LEGISLATIVE LIST.

PART I.

... the Indian Penal Code at ... s against laws with respect ... and excluding the use of His ... power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.
3. *Removal of prisoners and accused persons from one unit to another unit.*

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.
6. Marriage and divorce, infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.
8. Transfer of property other than agricultural land; registration of deeds and documents.
9. Trusts and Trustees.
10. *Contracts, including partnership, agency, contracts of carriage, and other* special forms of contract, but not including contracts relating to agricultural land
11. Arbitration
1 ...
1 ... amps, but ...
... with respect to any ...
... Court, with respect ...

18. ... e reception or treatment of lunatics and mental deficients
19. Poisons and dangerous drugs
20. Mechanically propelled vehicles.
21. Boilers
22. Prevention of cruelty to animals.
23. European vagrancy; criminal tribes.
24. Inquires and statistics for the purpose of any of the matters in this Part o this List.

25. Fees in respect of any of the matters in this Part of this List, but including fees taken in any Court.

PART II.*

26. Factories.

27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

28. Unemployment insurance.

29. Trade unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquires and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

EIGHTH SCHEDULE.†

THE FEDERAL RAILWAY AUTHORITY.

1. The Federal Railway Authority, which shall be a body corporate by, and may sue and be sued in, that name, (in this Schedule referred to as "the Authority") shall consist of seven persons to be appointed by the Governor-General.

2. A person shall not be qualified to be appointed or to be a member of the Authority—

(*a*) unless he has had experience in commerce, industry, agriculture, finance, or administration; or

(*b*) if he is, or within the twelve months last preceding has been—

(i) a member of the Federal or any Provincial Legislature; or

(ii) in the service of the Crown in India; or

(iii) a railway official in India

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4. The Governor-General, exercising his individual judgment, may make rules providing for the appointment of temporary members to act in place of any members temporarily unable to perform the duties of their office.

5. A member of the Authority shall be entitled to receive such salary and allowances as the Governor-General, exercising his individual judgment, may determine:

Provided that the emoluments of a member shall not be reduced during his term of office.

6. All acts of the Authority and all questions before them shall be done and decided by a majority of the members present and voting at a meeting of the Authority.

In the case of an equality of votes at any meeting, the person presiding thereat shall have a second or casting vote.

7. If a member of the Authority is or becomes the holder of or tenders for any contract for the supply of materials to, or the execution of works for, any railway in India, or is or becomes concerned in the management of any company holding or tendering for such a contract as aforesaid, he shall forthwith make full disclosure of the facts to the Authority and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract.

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* See section

† See section 182.

. . . the Governor-

standing orders

or revoke any such order.

10. The proceedings of the Authority shall not be invalidated by any vacancy among their number, or by any defect in the appointment or qualification of any member.

11. At the head of the executive staff of t way commissioner, being a person with exp shall be appointed by the *Governor-General*, consultation with the Authority.

12. The chief railway commissioner shall be assisted in the performance of his duties by a financial commissioner, who shall be appointed by the Governor-General, and by such additional commissioners, being persons with experience in railway administration, as the Authority on the recommendation of the chief railway commissioner may appoint.

13. The chief railway commissioner shall not be removed from office except by the Authority and with the approval of the Governor-General, exercising his individual judgment, and the financial commissioner shall not be removed from office except by the Governor-General, exercising his individual judgment.

14. The chief railway commissioner and the financial commissioner shall have the right to attend any meeting of the Authority, and the financial commissioner *shall have the right to require any matter which relates to, or affects, finance to be*

the custody of such moneys and such agency transactions on the same terms and conditions as those upon which they undertake the custody of moneys belonging to, or agency transactions for, the Federal Government.

NINTH SCHEDULE*

Provisions of Government of India Act Continued in Force with Amendments Until the Establishmet of the Federation.

The Governor-General's Executive Council.

Members of Council.

36 (1) The members of the Governor-General's Executive Council shall be appointed by His Majesty by warrant under the Royal Sign Manual.

(2) The number of the members of the Council shall be such as His Majesty *thinks fit to appoint.*

(3) Three at least of them must be persons who have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, or a pleader of a high court, of not less than ten years' standing

(4) If any member of the Council (other than the Commander in-Chief for the time being of His Majesty's forces in India) is at the time of his appointment in the military service of the Crown, he shall not, during his continuence in office as such member, hold any military command or be employed in actual military duties.

(5) *Provision may be made by rules under this Act as to the qualifications to* be required in respect of the members of the Governor-General's Executive Council, in any case where such provision is not made by the foregoing provisions of this section.

Rank and precedence of Commander-in-Chief.

37. If the Commander-in-Chief for the time being of His Majesty's forces in India is a member of the Governor-General's Executive Council, he shall, subject to the provisions of this Act, have rank and precedence in the Council next after the Governor-General.

* See section 317.

Vice-President of Council.

38. The Governor-General shall appoint a member of his Executive Council to be vice-president thereof.

Meetings.

39. (1) The Governor-General's Executive Council shall assemble at such places in India as the Governor-General in Council appoints.

(2) At any meeting of the C[illegible] presiding and one member of the [illegible] may exercise all the functions of the [illegible]

Business of Governor-General in Council.

40. (1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a secretary to the Government of India, or otherwise as the Governor-General in Council may direct, and, when so signed, shall not be called into question in any legal proceeding on the ground that they were not duly made by the Governor-General in Council.

(2) The Governor-General may make rules and orders for the more convenient transaction of business in his Executive Council, and every order made or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

Procedure in case of difference of opinion.

41. (1) If any difference of opinion arises on any question brought before a meeting of the Governor-General's Executive Council, the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the Governor-General or other person presiding shall have a second or casting vote.

(2) Provided that, whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity or interests of British India, or of any part thereof, are or may be [illegible] vernor-General, [illegible] sed ought to be [illegible] rejected, and [illegible] t opinion, the [illegible] adopt, suspend or reject the measure, in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension or rejection of the measure, and the fact of their dissent, be reported to the Secretary of State, and the report shall be accompanied by copies of any minutes which the members of the Council have recorded on the subject.

(4) Nothing in this section shall empower the Governor-General to do anything which he could not lawfully have done with the concurrence of his Council.

4[illegible]

[illegible] the Governor-General, when present, dissents from the majority at a meeting of the Council.

Powers of [illegible] in absence f[illegible]

43. (1) [illegible] hat it is expedient [illegible] visit any part of [illegible] tive Council, the [illegible] by order, authorize the G[illegible] all or any of the powers whic[illegible] uncil at meetings of the Council.

The Indian Legislature.

Indian legislature.

63. Subject to the provisions of this Act, the Indian legislature shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers.

Council of State.

63A. (1) The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under this Act, of whom not more than twenty shall be official members.

(2) The Governor-General shall have power to appoint, from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct.

(3) The Governor General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

Legislative Assembly.

63B. (1) The Legislative Assembly shall consist of members nominated or elected in accordance with rules made under this Act.

(2) The total number of members of the Legislative Assembly shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred:

Provided that rules made under this Act may provide for increasing the number of members of the Legislative Assembly as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the other members shall be non-official members

(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

President of Legislative Assembly.

63C. (1) There shall be a president of the Legislative Assembly who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(2) There shall be a deputy president of the Legislative Assembly, who shall preside at meetings of the Assembly in the absence of the president, and who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(3) A president and a deputy president shall cease to hold office if they cease to

under their hands

by a vote of the

as may be determined by Act of the Indian Legislature

Duration and sessions of Legislative Assembly and Council of State.

63D (1) Every Council of State shall continue for five years, and every Legislative Assembly for three years, from its first meeting.

Provided that—

(a) either chamber of the legislature may be sooner dissolved by the Governor-General; and

in special cir-

shall appoint

of State, not more than nine months, after the date of dissolution for the next session of that chamber.

s and places for holding the

he thinks fit, and may also

e such sessions.

(3) Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding

(4) All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

Membership of both chambers.

63E. (1) An official shall not be qualified chamber of the official member the service of the Crown in India, his seat in that chamber shall become vacant.

(2) If an elected member of either chamber of the Indian legislature becomes a member of the other chamber, his seat in such first-mentioned chamber shall thereupon become vacant.

(3) If any person is elected a he shall, before he takes his sea *of which he desires to be a m* shall become vacant.

(4) Every member of the Governor-General's ted as a member of one chamber of the Indian *of attending in and addressing the other chamber,* chamb rs.

Supplementary provisions as to composition of Legislative Assembly and Council of State.

64. (1) Subject to the provisions of this Act, provision may be made by rules under this Act as to—

il of State and the occurring by reason death, acceptance of office, or resignation duly accepted, or otherwise ; and

(*b*) the conditions under which and the manner in which persons may be nominated as members of the Council of State or the Legislative Assembly ; and

(*c*) the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorates) and any matter incidental or ancillary thereto ; and

(*d*) d as *members* of the Co

(*e*) election ; and

(*f*)

(2) Subject to any such rules, any person who is a ruler or subject of any state in India may be nominated as a member of the Council of State or the Legislative Assembly.

Business and proceedings in Indian legislature.

67. (1) Provision may be made by rules under this Act for regulating the course der in the nd as to the Legislative Assembly in the absence of the d the rules and for

(3) If any Bill which has been passed by one chamber is not, within six months after the passage of the Bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both chambers : Provided that standing orders made under this section may provide for meetings of members of both chambers appointed for

the purpose, in order to discuss any difference of opinion which has arisen between the two chambers.

(4) Without prejudice to the powers of the Governor-General under section *sixty-eight* of this Act, the Governor General may, where a Bill has been passed by both chambers of the Indian legislature, return the Bill for reconsideration by either chamber.

(5) Rules made for the purpose of this section may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to this section

(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the Governor-General in Council, but may, with the consent of the Governor-General, be altered by the chamber to which they relate.

Any standing order made as aforesaid which is repugnant to the provisions of any rules made under this Act shall, to the extent of that repugnancy but not otherwise, be void

(7) Subject to the rules and standing orders affecting the chamber, there shall be freedc [illegible] erson shall be liable [illegible] in either chamber, [illegible] proceedings of either chamber.

67A. (1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both Chambers of the Indian legislature in each year.

Indian Budget.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be [illegible] e open to [illegible] is under [illegible] ; and [illegible] s payable [illegible] dependants of—

(*a*) persons appointed by or with the approval of His Majesty ;

(*b*) Chief Commissioners and Judicial Commissioners ; and

(iv) any grants for purposes connected with the administration of any areas in a Province which are for the time being Excluded Areas ; and

(v) the sums payable to His Majesty under the Government of India Act, 1935, in respect of the expenses of His Majesty incurred in discharging the functions of the Crown in relation to Indian State ; and

(vi) expenditure classified by the order of the Governor-General in Council as—

(*a*) ecclesiastical ;

(*b*) external affairs ;

(*c*) defence ; or

(*d*) relating to tribal areas.

(vii) Expenditure of the Governor-General in discharging his functions as respects matters with respect to which he is required by the provisions of the Government of India Act, 1935, for the time being in force to act in his discretion ;

(viii) any other expenditure declared by the provisions of the Government of India Act, 1935, for the time being in force to be charged on the revenues of the Federation.

(4) If any question arises as to whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

[illegible] iation of [illegible] heads [illegible] for grants.

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding of the amount therein referred to,

power, in cases of

be necessary for the s

67B. (1) Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon—

Provision for case of failure to pass legislation.

(a) if the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General; and

(b) if the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

(2) Every such Act shall be expressed to be made by the Governor-General and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and

Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.

68. (1) When a Bill has been passed by both chambers of the Indian legislature, the Governor-General may declare that he assents to the Bill, or that he withholds assent from the Bill, or that he reserve the Bill for the

Assent of Governor-General to Bills.

islature shall not become thereto, or, in the case easure, until His Majesty notified by the Governor-General.

69. (1) When an Act of the Indian legislature has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty in Council to signify his disallowance of any such Act.

Power of Crown to disallow Acts.

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

72. The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six

Power to make ordinances in cases of emergency.

months from its promulgation, have the like force of law as an Act passed by the

Salaries, leave of absence, vacation of office, &c.

Salaries and allowances of Governor-General and certain other officials in India.

85 (1) There shall be paid to the Governor-General of India, to the Commander-in-Chief of His Majesty's Forces in India and to the members of the Governor-General's Executive Council (other than the Commander-in-Chief), out of the revenues of the Governor-General in Council, such salaries and such allowances (if any) for equipment and voyage as the Secretary of State may by order fix in that behalf and subject to or in default of any such order as are payable at the commencement of Part III of the Government of India Act, 1935; but the salary of the Governor General shall not exceed two hundred and fifty-six thousand rupees annually, the salary of the Commander-in-Chief shall not exceed one hundred thousand rupees annually and the salary of members of the Governor-General's Executive Council (other than the Commander-in-Chief) shall not exceed eighty thousand rupees annually.

(2) Provided as follows:—

(*a*) the Secretary of State shall not make any Order affecting salaries of members of the Governor-General's Executive Council expect after consulting his advisers and with the concurrence of at least one-half of them;

(*b*) if any person to whom this section applies holds or enjoys any pension or salary or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him;

tion with respect to allowances shall on the revenues of the Governor-

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein:

allowances or other forms for such persons before the Act, 1935, by the Secretary, Secretary of State.

Power to grant leave of absence to Governor-General, &c.

86 (1) The Secretary of State may grant to the Governor-General and, on the recommendation of the Governor-General in Council, to the Commander-in-Chief, leave of absence for urgent reasons of public interest, or of health or of private affairs.

(2) The Governor-General in Council may grant to any member of his Executive Council (other than the Commander-in-Chief) leave of absence for urgent reasons of health or of private affairs.

(3) Leave of absence shall not be granted to any person in pursuance of this section for any period exceeding four months nor more than once during his tenure of office:

Provided that the Secretary of State may, if he thinks fit, extend any period of leave so granted but in any such case the reasons for the extension shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament

vacant in the case of a person as from the termination of that ment of his absence.

(5) Where a person obtains leave of absence in pursuance of this section, he shall be entitled to receive during his absence such leave-allowances as may be prescribed by rules made by the Secretary of State, but, if he does not resume his duties upon

the termination of the period of the leave, he shall, unless the Secretary of State
rescribed as aforesaid,

is granted leave for
ıy in addition to the leave-
to him such further allow-
State may think fit.
both Houses of Parliament
as soon as may be after they are made.

Acting appointments during the absence of the Governor-General, &c, on leave.

87. (1) Where leave is granted in pursuance of the foregoing section to the Governor-General or to the Commander-in-Chief, a person shall be appointed to act in his place during his absence and the appointment shall be made by His Majesty b

be

temporary member of that Council.

(2) The person so appointed shall, until the return to duty of the permanent holder of the office, or, if he does not return, until a successor arrives, hold and execute the office to which he has been appointed and shall have and may exercise all the rights
antages
which

Power for Governor General to exercise powers before taking seat.

89. (1) If any person appointed to the office of Governor-General is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of Governor-General before he takes his seat in Council he
ification his appointment

to the place where the
the powers which might

otification, but before the communication thereof to the Council, shall be valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of Governor-General.

under the foregoing provi-
member of the council (other
de therein, with the same

Temporary vacancy in office of Governor-General.

90. (1) If a vacancy occurs in the office of
successor in Ind
of the following
nor of Madras, the Governor of Bombay, and the Governor of Bengal, who was first appointed to the office of governor by His Majesty shall hold and execute the office of Governor-General until a successor arrives or until some person in India is duly appointed thereto.

ll have and

(4) Until such a governor has assumed the office of Governor-General, if no successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior member of the Executive Council (other than the Commander-in-Chief) shall hold and execute the office of Governor-General until the vacancy is filled in accordance with the provisions of this Act.

Council so acting as Governor-
ise all the rights and powers of the
receive the emoluments and ad-
vantages appertaining to the office, forgoing his salary and allowances as member of Council for that period.

Temporary vacancy in office of member of the Executive Council.

92. (1) If a vacancy occurs in the office of a member of the Executive Council of the Governor-General (other than the Commander-in-Chief), and there is no successor present on the spot, the Governor-General in Council shall supply the vacancy by appointing a temporary member of council.

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(*a*) no person may be appointed a temporary member of council who might not have been appointed to fill the vacancy supplied by the temporary appointment; and

(*b*) if the Secretary of State informs the Governor-General that it is not the intention of His Majesty to fill a vacancy in the Governor-General's Executive Coun-
under this section to fill the vacancy,
been made before the date of the receipt
. the tenure of the person temporarily

Vacancies in legislative councils.

93. (1) A nominated or elected member of either chamber of the Indian legislature may resign his office to the Governor-General, and on the acceptance of the resignation the office shall become vacant.

(2) *If for a period of two consecutive months* any such member is absent from India or unable to attend to the duties of his office the Governor General may, by notification published in the government gazette, declare that the seat in council of that member has become vacant.

Supplemental.

Provisions as to rules.

129A (1) Where any matter is required to be prescribed or regulated by rules under *this Act*, and *no special provision is made as* to the authority by whom the rules are to be made, the rules shall be made by the Governor-General in Council, with the sanction of the Secretary of State, and shall not be subject to repeal or alteration by any legislature in India.

(2) Any rules made under this Act may be so framed as to make different provision for different provinces

(3) Any rules to which subsection (1) of this section applies shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council

may annul the rules or any of them, and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder :

Provided that the Secretary of State may direct that any rules to which this section applies shall be laid in draft before both Houses of Parliament, and in such case the rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications and additions to which
be made
made shal
Parliament.

TENTH SCHEDULE*.

PROVISIONS AS TO GOVERNOR OF BURMA.

1. There shall be paid to the Governor such annual salary, such allowances for his expenses in respect of equipment and travelling upon appointment and such allowances during his term of office as may from time to time be fixed by His Majesty in Council.

ng the Governor to discharge con-
ffice as may be determined by His

ne shall, in lieu of his salary, be
His Majesty in Council.

4. There shall be granted to and in respect of the Governor such customs privileges as may be specified by Order in Council.

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allowances and privileges, as the Governor, and, if he holds any other office, shall not act therein or be entitled to the salary and allowances appertaining thereto

provisions of this Schedule shall be
rma.

ELEVENTH SCHEDULE†.

AREAS IN BURMA TO WHICH SPECIAL PROVISIONS APPLY.

PART I.

(1) The Federated Shan States as specified in Notification No 31, dated 27th September, 1922, of the Political Department of the Government of Burma as amended by any subsequent notification made before the commencement of Part XIV of this Act.

(2) The Shan States specified in Notification No. 41, dated 5th October, 1922, of the Political Department of the Government of Burma, as amended by any subsequent notification made before the commencement of Part XIV of this Act, other than the Federated Shan States.

(, Bhamo and Katha Districts.

(6) The Somra Tract.

(7) The area known as the Triangle.

(8) The area known as the Hukawng Valley lying to the north of the Upper Chindwin District.

(9) The Salween District.

(10) All tribal territories which at the date of coming into operation of Part XIV of this Act are unadministered.

PART II.

(1) Such parts of the Myitkyina and Bhamo Districts as are not included in Part I of this Schedule.

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* See section 321.

† See sections 325, 326, 347, 358, 377, 378.

(7) Such parts of the Upper Chindwin District as constitute the Homalin sub-
in the former Tamu
abolition.
wkareik township, and
the Toungoo District
ty in Council.

TWELFTH SCHEDULE.*

COMPOSITION OF THE BURMA LEGISLATURE.

General qualification for Membership.

1. A person shall not be qualified to be chosen to fill a seat in the Legislature unless he—

(a) is a British subject; and

(b) is, in the case of a seat in the House of Representatives, not less than twenty-five years of age, and in the case of a seat in the Senate, not less than thirty-five years of age; and

specified in, or prescribed

hosen to serve as a member of the Burma Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term

The House of Representatives.

3

(d) two seats shall be filled by representatives of Anglo-Burmans;

(e) three seats shall be filled by representatives of Europeans;

(f) eleven seats shall be filled by representatives of Commerce and Industry;

(g) one seat shall be filled by a representative of Rangoon University,

(h) two seats shall be filled by representatives of Indian Labour;

e references

4. So much of Burma as His Majesty may deem suitable for inclusion in any constituency, or in any constituency of a particular class, shall be divided into territorial constituencies—

(i) for the election of persons to fill general non-communal seats;

(ii) for the election of persons as representatives of Karens;

(iii) for the election of persons as representatives of Indians;

(iv) for the election of persons as representatives of Indian Labour;

(v) for the election of persons as representatives of non-Indian Labour,

and in the case of each class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

5. In the case of the seats to be filled by representatives of Anglo-Burmans and the seats to be filled by representatives of Europeans, the whole of Burma shall be the constituency

6. The provisions of the Thirteenth Schedule to this Act shall have effect with respect to the election of persons to hold the seats in the House of Representatives mentioned in the two last preceding paragraphs.

7 Persons shall be chosen in such manner as may be prescribed to hold the seats to be filled by a representatives of Commerce and Industry and Rangoon University

8. Of the seats to be filled by representatives of Commerce and Industry, one shall be filled by a representative of the Burmese Chamber of Commerce, two shall be filled by representatives of the Burma Indian Chamber of Commerce, one shall be filled by a representative of the Nattukottai Chettiars' Association, five shall be filled by representatives of the Burma Chamber of Commerce, one shall be filled by a representative of the Rangoon Trades Association and one shall be filled by a representative of the Chinese Chamber of Commerce.

* See section 335.

9. A person shall not be qualified to be chosen to fill a seat in the House of Representatives unless—

some seat in the House of Representatives.

The Senate.

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12. (1) A person shall not be qualified to be chosen to hold a seat in the Senate unless he—

(i) was, in the financial year preceding that in which the election is held, assessed to income-tax in Burma on an income of twelve thousand rupees a year or over ; or

(ii) paid, during and in respect of the year of assessment preceding that in which the election is held, land revenue of a thousand rupees or over in Lower Burma or five hundred rupees or over in Upper Burma ; or

(iii) has previous official service in Burma as a member of the Governor's Executive Council under the Act repealed by this Act, or as a minister, or as a ... or as a per-

of a title

(v) possesses such other qualifications in respect of the rendering of distinguished public service as the Governor in his discretion may prescribe.

(b) where water rate is levied in addition to land revenue, payment thereof shall be treated as payment of land revenue.

General.

13. (1) In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say :—

"a European" means a person whose father or any of whose other male progenitors in the male line is or was of European descent, and who is not a native of India or Burma ;

"an Anglo-Burman" means a person whose father or any of whose other male progenitors in the male line is or was of European descent, but who is a native of India or Burma ;

"a Karen" includes a Ta
which the Governor exercising h
Gazette, declare to be a Karen or

"an Indian" means a perso
subject and resident in Burma,
whose father or grandfather was so born, or had at the birth of the person in question or of the father of the person in question, as the case may be, such a domicile ; and

"prescribed" means prescribed by His Majesty in Council or, so far as regards ... of Burma is

at the date when the question falls to be determined and not at the date of the birth of that person or, as the case may be, the said past date.

(3) In this paragraph the expression 'native of India or Burma" has the same meaning as the expression 'native of India" had for the purposes of section six of the *Government of India Act, 1870, and accordingly it includes any person born and* domiciled within the dominions of His Majesty in India or Burma of parents habitually resident in India or Burma and not established there for temporary

hereinafter mentioned is

to time make provision

(a) the delimitation of the territorial constituencies ;

(b) the qualifications entitling persons to vote at the elections and the preparation of electoral rolls ;

(c) the conduct of the elections and the methods of voting thereat ;

(d) the filling of casual vacancies in the House of Representatives and the Senate ;

(e) the expenses of candidates at the elections ,

(f) corrupt practices and other offences at or in connection with the elections ;

(g) the decision of doubts and disputes arising out of or in connection with the elections ;

(h) matters ancillary to any such matters as aforesaid.

15. In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or, after the constitution of the Burma Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws),

make rules for carrying into

the provisions of the Thirteei

Legislature and in particular,

casual vacancies, and the proceedings

application to elections to the Senate of the principle of proportional representation by means of the single transferable vote ;

(iv) the expenses of candidates at elections ;

(v) corrupt practices and other offences at or in connection with elections ;

(vi) the decision of doubts and disputes arising out of or in connection with elections ; and

(vii) the manner in which the rules are to be carried into effect.

THIRTEENTH SCHEDULE*

Provisions as to Franchise in Burma

General Constituencies.

1. There shall be an electoral roll for every general constituency and no person who is not, and, except as expressly provided by this Schedule, every person who is, *for the time being included in the electoral roll for any such constituency shall be* entitled to vote in that constituency

In this Schedule "general constituency" means a constituency other than a constituency for the election of representatives of commerce and industry, the representative of Rangoon University or representatives of labour

2. The electoral rolls for the general constituencies shall be made up, and from

reference to such date, in this Schedule

be directed in each case by the Governor

lectoral roll, for any general constituency unless he has attained the age of eighteen years and is either a British subject or a subject of a prescribed Indian State, or if it is so prescribed, a subject of any Indian State.

* See schedule 12 (6).

4. No person shall be included in the electoral roll for, or vote at any election in, any general constituency if he is of unsound mind and stands so declared by a competent court.

5. No person shall be included in the electoral roll for a Karen constituency, an Indian general constituency, the Anglo-Burman constituency or the European constituency unless he is a Karen, an Indian, an Anglo-Burman or a European, as

electoral roll for any Karen constituency, glo-Burman constituency or the European electoral roll for a general non-communal constituency or vote at any election to fill a general non-communal seat.

7. No person shall at a general election vote in more than one general constituency and such provisions, if any, as may be prescribed shall have effect for the purpose of preventing persons being included in the electoral roll for more than one general constituency.

8. No person shall be included in tl in, a general constituency if he is fc under the provisions of any such Order by the Governor as may be made or passed under this Act with respect to corrupt practices and other offences in connection with elections, and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for general constituencies in which it may be included.

9. No person shall vote at any election in a general constituency if he is for the l servitude or imprisonment. eight of this Schedule, a oll for a general constituency

(*a*) was in the previous financial year assessed to income-tax in Burma ; or

ged officer, non-commissioned officer or orces, or is a retired, pensioned, or dis- Burma, not being a person dismissed or

(*c*) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of the Auxiliary Force (India), the Indian Territorial Force, or any prescribed Burman auxiliary or territorial force not being a person who has been dismissed or discharged from the force for disciplinary reasons or has served in the force for less than four years ; or

(*d*) was in the previous agricultural year and any other two agricultural years entered in the capitation tax assessment roll as liable to pay capitation tax, or entered in the thathameda tax assessment roll as head of the household and liable to pay thathameda tax and was not exempted from payment of capitation tax or thathameda tax, as the case may be, on the ground of poverty or of being an immigrant from a country outside Burma ; or

(*e*) has attained the age of sixty years and was at any time in his sixtieth year entered in the capitation tax assessment roll as liable to pay capitation tax and was not exempted from payment thereof on the ground of poverty or of being an immigrant from a country outside Burma ; or

(*f*) paid, during and in respect of the previous agricultural year or the previous financial year and any other two agricultural or financial years, a tax levied under the Burma Rural Self-Government Act, 1921 ; or

(*g*) paid in Burma, during and in respect of the previous agricultural year, and any other two agricultural years, land revenue of not less than five rupees per year.

eding paragraph, but sub- chedule, a person shall be eral constituency if he is

hundred rupees or more in value ; or

(*b*) paid municipal taxes or cantonment taxes in Burma in respect of the previous financial year and any other two financial years ; or

(*c*) for not less than three months in the previous financial year, and for not less than three months in each of any other two financial years, occupied, in consideration of the payment of rent or the rendering of services, a building, a part of a building

or a piece of land in the constituency, the monthly rental of which alone, or
r building, part of a buil-
ughout the three months
ur rupees.

. building and makes pay-
he shall be deemed to
ation to him be deemed
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odging ;

(ii) where two or more persons (not being lodgers) jointly occupy a building or part of a building as a dwelling or for the purposes of their business or their respective businesses, the rental value of the building or part of a building shall, in relation to each of those persons, be deemed to be the rental value thereof divided by the number of those persons ;

(iii) subject as aforesaid, where the assessment of municipal taxes is based on the rental value of the assessed property, the rental value of any property adopted for the purpose of any such assessment shall be treated as the rental value of that property.

ph shall apply in relation to
Toungoo, the municipality
constituency were an urban
constituency, except that for any reference to the constituency (other than that contained in the reference to the electoral roll for the constituency) there shall be substituted a reference to that one of the said municipalities which is included in the constituency.

13 Any requirement specified in paragraph ten or paragraph eleven of this Schedule as a requirement to be satisfied in relation to the previous financial year
e previous agricultural year and
to be satisfied in the case of any
elation to the previous financial

of a general constitu-
he commencement of

financial year, or at
y of the value of not
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rs or in relation to
e said paragraphs
s or three financial
years, as the case may be.

In determining for the purpose of sub-paragraph (c) of this paragraph whether a person has fulfilled in relation to any year the requirement specified in sub paragraph (c) of paragraph eleven of this Schedule, any reference in sub-paragraph (c) of the said paragraph eleven to the constituency shall be construed as a reference to any one of the
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comprised in all the urban constituencies in Burma and the municipalities of Toungoo Kyaukpyu and Thayetmyo.

16 For the purposes of the foregoing provisions of this Schedule any property owned or occupied or payment made by, and any assessment made on, a person as a trustee, administrator, receiver or guardian or in any other fiduciary capacity shall be left out of account.

Labour Constituencies.

presentatives of non-
ntitled to vote at any

to vote at elections in labour constituencies shall be such as may be prescribed.

Interpretation, &c.

19. (1) In this Schedule the following expressions have the meanings assigned to them, that is to say—

except in the
the Twelfth

"previous financial year" and "previous agricultural year" mean respectively the financial year and the agricultural year immediately preceding that in which the precribed date falls ;

"urban constituencies" and "rural constituencies" mean such general constituencies as may be classified as urban or rural constituencies respectively by an Order

June ;
police forces, if any,

(2) Any reference in this Schedule to persons ordinarily resident in any area includes a reference to any person who maintains a dwelling in the area ready for occupation, in which he occasionally resides.

(3) Any reference in this Schedule to immovable property of a specified value shall be contrued as including a reference to a share of that value in immovable property

ncome tax in any
in a firm assessed
h income tax was
so assessed is certified in the prescribed manner to have been not less than the

notwithstanding that
taken by or on behalf
of the mortgagee ;

(*b*) a financial year shall not be deemed to be earlier than an agricultural year unless it ended before that agricultural year began,

(6) Any reference in this Schedule to any Act shall be construed as a reference to those provisions as amended by or under any other Act or, if those provisions are repealed and re enacted, with or without modification, to the provisions so re enacted.

(7) If the boundaries of any municipality mentioned in this Schedule are altered, any reference in this Schedule to that municipality shall thereafter be taken as a reference to the municipality as altered

FOURTEENTH SCHEDULE.*

FORMS OF OATHS OR AFFIRMATIONS.

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* See sections 341, 399.

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"I, A. B, having been appointed Chief Justice [*or* a judge] of the High Court at Rangoon, do solemnly swear [*or* affirm] that I will be faithful and bear true allegiance to His Majesty the King, his Heirs and Successors, and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

FIFTEENTH SCHEDULE.*

The Burma Railway Board.

I. The Burma Railway Board shall be a body corporate by, and may sue, and be

office by the Governor exercising his individual judgment if he is satisfied that the member is for any reason unable or unfit to continue to perform the duties of his office.

3. A person shall not be qualified to be appointed or to be a non-official member of the Board—

(*a*) unless he has had experience in commerce, industry, agriculture, finance, or administration ; or

(*b*) if he is, or within the twelve months last preceding has been—

(*i*) a member of the Legislature ; or

(*ii*) in the service of the Crown in Burma , or

(*iii*) a railway official in Burma.

4. The Governor, exercising his individual judgment, may make rules providing for the appointment of temporary members to act in place of any members temporarily unable to perform the duties of their office

5. The President and members of the Board shall be entitled to receive such salary and allowances as the Governor, exercising his individual judgment, may from time to time determine

Provided that the emoluments of a member shall not be reduced during his term of office.

6 If a member of the Board is or becomes the holder of or tenders for any contract for th
in Burma, or
or tendering f
of the facts t
of, or vote on, any question with respect to the contract.

7. All acts of the Board and all questions before it shall be done and decided by a majority of the members present and voting at a meeting of the Board.

In the case of an equality of votes at any meeting, the person presiding thereat shall have a second or casting vote.

8 Subject to the provisions of this Act, the Board may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such order.

9. The proceedings of the Board shall not be invalidated by any vacancy among its number, or by any defect in the appointment or qualification of any member.

10. The Board shall not be liable to pay Burma income-tax or supertax on *any of its income, profits or gains*

* See section 388

comprised in all the urban constituencies in Burma and the municipalities of Toungoo, Kyaukpyu and Thayetmyo.

16. For the purposes of the foregoing provisions of this Schedule any property owned or occupied or payment made by, and any assessment made on, a person as a trustee, administrator, receiver or guardian or in any other fiduciary capacity shall be left out of account.

Labour Constituencies.

any election of representatives of non-Indian shall be entitled to vote at any

18. Subject as aforesaid, the qualifications entitling persons to vote at elections in labour constituencies shall be such as may be prescribed.

Interpretation, &c.

19. (1) In this Schedule the following expressions have the meanings assigned

Karen", "an Indian" and, except in the ave the same meanings as in the Twelfth Schedule to this Act ;

year" mean respectively preceding that in which the

ean such general constituenc respectively by an Order

June ;

police forces, if any,

(2) Any reference in this Schedule to persons ordinarily resident in any area includes a reference to any person who maintains a dwelling in the area ready for occupation, in which he occasionally resides.

(3) Any reference in this Schedule to immovable property of a specified value shall be contrued as including a reference to a share of that value in immovable property

(4) Any reference in this Schedule to persons assessed to income tax in any financial year shall be deemed to include a reference to any partner in a firm assessed to income tax in that year if his share of a firm's income on which income tax was so assessed is certified in the prescribed manner to have been not less than the minimum on which the tax is leviable.

(5) For the purposes of this Schedule—

(*a*) a person shall be deemed to be the owner of property notwithstanding that he has mortgaged it, unless possession thereof has been taken by or on behalf of the mortgagee ;

(*b*) a financial year shall not be deemed to be earlier than an agricultural year unless it ended before that agricultural year began.

(6) Any reference in this Schedule to any Act shall be construed as a reference to those provisions as amended by or under any other Act or, if those provisions are repealed and re enacted, with or without modification, to the provisions so re enacted.

(7) If the boundaries of any municipality mentioned in this Schedule are altered, any reference in this Schedule to that municipality shall thereafter be taken as a reference to the municipality as altered.

FOURTEENTH SCHEDULE.*

FORMS OF OATHS OR AFFIRMATIONS.

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FIFTEENTH SCHEDULE.*

THE BURMA RAILWAY BOARD.

1. The Burma Railway Board shall be a body corporate by, and may sue, and be sued, in that name.

2. The Burma C[illegible] the Burmese Chambe[illegible] each nominate one [illegible] his office.

3. A person shall not be qualified to be appointed or to be a non-official member of the Board—

(a) unless he has had experience in commerce, industry, agriculture, finance, or administration ; or

(b) if he is, or within the twelve months last preceding has been—

(1) a member of the Legislature ; or

[illegible] iake rules providing [illegible] y members tempora-

5. The President and members of the Board shall be entitled to receive such salary and allowances as the Governor, exercising his individual judgment, may from time to time determine

Provided that the emoluments of a member shall not be reduced during his term of office.

6 If a memt[illegible] contract for the [illegible] in Burma, or is [illegible] or tendering for [illegible] of the facts to the Board and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract.

7. All acts of the Board and all questions before it shall be done and decided by a majority of the members present and voting at a meeting of the Board.

In the case of an equality of votes at any meeting, the person presiding thereat shall have a second or casting vote

8 Subject to the provisions of this Act, the Board may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such order.

9 The proceedings of the Board shall not be invalidated by any vacancy among its number, or by any defect in the appointment or qualification of any member.

10 The Board shall not be liable to pay Burma income-tax or supertax on any of its income, profits or gains

* See section 388

comprised in all the urban constituencies in Burma and the municipalities of Toungoo, Kyaukpyu and Thayetmyo.

16. For the purposes of the foregoing provisions of this Schedule any property owned or occupied or payment made by, and any assessment made on, a person as a trustee, administrator, receiver or guardian or in any other fiduciary capacity shall be left out of account.

Labour Constituencies.

17. No Indian shall be entitled to vote at any election of representatives of non- ... titled to vote at any

... to vote at elections

Interpretation, &c.

19. (1) In this Schedule the following expressions have the meanings assigned to them, that is to say—

"a European," "an Anglo-Burman," "a Karen", "an Indian" and, except in the phrase "the prescribed date," "prescribed," have the same meanings as in the Twelfth Schedule to this Act ;

"previous financial year" and "previous agricultural year" mean respectively the financial year and the agricultural year immediately preceding that in which the precribed date falls ;

"urban constituencies" and "rural constituencies" mean such general constituencies as may be classified as urban or rural constituencies respectively by an

... June ;

... police forces, if

... dent in any area includes a reference to any person who maintains a dwelling in the area ready for occupation, in which he occasionally resides.

(3) Any reference in this Schedule to immovable property of a specified value shall be contrued as including a reference to a share of that value in immovable property

(4) Any reference in this Schedule to persons assessed to income tax in any financial year shall be deemed to include a reference to any partner in a firm assessed to income tax in that year if his share of a firm's income on which income tax was so assessed is certified in the prescribed manner to have been not less than the minimum on which the tax is leviable,

(5) For the purposes of this Schedule—

(*a*) a person shall be deemed to be the owner of property notwithstanding that he has mortgaged it, unless possession thereof has been taken by or on behalf of the mortgagee ;

(*b*) a financial year shall not be deemed to be earlier than an agricultural year unless it ended before that agricultural year began,

(6) Any reference in this Schedule to any Act shall be construed as a reference to those provisions as amended by or under any other Act or, if those provisions are repealed and re enacted, with or without modification, to the provisions so re enacted.

(7) If the boundaries of any municipality mentioned in this Schedule are altered, any reference in this Schedule to that municipality shall thereafter be taken as a reference to the municipality as altered.

FOURTEENTH SCHEDULE.*

FORMS OF OATHS OR AFFIRMATIONS.

I

... r Representa- ... bear true ... will faith-

* See sections 341, 399.

"I, A. B., having been appointed (
at Rangoon, do solemnly swear [or
ance to His Majesty the King, his
perform the duties of my office to the best of my ability, knowledge and judgment."

FIFTEENTH SCHEDULE.*

The Burma Railway Board

1. The Burma Railway Board shall be a body corporate by, and may sue, and be sued, in that name.

2. The Burma Chamber of Commerce, the Burma Indian Chamber of Commerce, the Burmese Chamber of Commerce, and the Chinese Chamber of Commerce shall each nominate one
be appointed by the
The non official
for re appointment,
office by the Governor exercising his individual judgment if he is satisfied that the member is for any reason unable or unfit to continue to perform the duties of his office.

3. A person shall not be qualified to be appointed or to be a non-official member of the Board—

(a) unless he has had experience in commerce, industry, agriculture, finance, or

(ii) in the service of the Crown in Burma ; or

(iii) a railway official in Burma.

4. The Governor, exercising his individual judgment, may make rules providing for the appointment of temporary members to act in place of any members temporarily unable to perform the duties of their office

5. The President and members of the Board shall be entitled to receive such salary and allowances as the Governor, exercising his individual judgment, may from time to time determine

Provided that the emoluments of a member shall not be reduced during his term of office.

6 If a member of the Board is or becomes the holder of or tenders for any contract for the supply of materials to, or the execution of works for, any railway in Burma, or is or becomes concerned in the management of any company holding or tendering for such a contract as aforesaid, he shall forthwith make full disclosure of the facts to the Board and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract

7 All acts of the Board and all questions before it shall be done and decided by a majority of the members present and voting at a meeting of the Board

In the case of an equality of votes at any meeting, the person presiding thereat shall have a second or casting vote

8. Subject to the provisions of this Act, the Board may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such order.

9 The proceedings of the Board shall not be invalidated by any vacancy among its number, or by any defect in the appointment or qualification of any member.

10 The Board shall not be liable to pay Burma income-tax or supertax on any of its income, profits or gains

* See section 388

SIXTEENTH SCHEDULE.*

ENACTMENTS REPEALED.

Section and Chapter of Act	Title	Extent of Repeal.
21 Geo. 3. c. 70	The East India Company Act, 1780.	Section eighteen.
37 Geo. 3. c. 142	The East India Act, 1797.	Section twelve.
16 & 17 Vict. c. 107.	The Customs Consolidation Act, 1853.	Section three hundred and twenty-nine.
23 & 24 Vict. c. 89.	An Act to extend in certain cases the provisions of the Superannuation Act, 1859.	The whole Act.
47 & 48 Vict. c. 38.	The Indian Marine Service Act, 1884	The whole Act.
56 & 57 Vict. c. 62.	The Madras and Bombay Armies Act, 1893.	The whole Act.
5 & 6 Geo 5. c 61.	The Government of India Act, 1915.	The whole Act.
6 & 7 Geo. 5. c. 37.	The Government of India (Amendment) Act, 1916.	The whole Act, except sections six and eight
9 & 10 Geo. 5 c. 101.	The Government of India Act, 1919.	The whole Act, except the Preamble and subsection (1) of section forty-seven.
12 & 13 Geo. 5. c 20.	The Indian High Courts Act, 1922.	The whole Act.
14 & 15 Geo. 5. c. 28.	The Government of India (Leave of Absence) Act, 1924.	The whole Act.
15 & 16 Geo. 5. c 83.	The Government of India (Civil Services) Act, 1925.	The whole Act.
17 & 18 Geo. 5. c. 8.	The Government of India (Indian Navy) Act, 1927.	The whole Act, except section two and subsection (1) of section four.
17 & 18 Geo. 5. c. 24.	The Government of India (Statutory Commission) Act, 1927.	The whole Act.
20 & 21 Geo. 5. c. 2.	The Government of India (Aden) Act, 1929.	The whole Act.
23 & 24 Geo. 5. c. 23	The Government of India (Amendment) Act, 1933.	The whole Act.
23 & 24 Geo. 5. c. 36.	The Administration of Justice (Miscellaneous Provisions) Act, 1933.	In the First Schedule the words "5 & 6 "Geo. 5. c. 61; The "Government of "India Act; section "one hundred and "twenty-seven."

* See section 478.

THE GOVERNMENT SAVINGS BANKS ACT, 1873.

ACT V OF 1873.

RECEIVED THE ASSENT OF THE G. G. IN COUNCIL ON THE 28TH JANUARY, 1873.

An Act to amend the Law relating to Government Savings Banks

Preamble.

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks; it is hereby enacted as follows:—

Preliminary.

Short title.

1. This act may be called the Government Savings Banks Act, 1873.

Local extent.

It extends to the whole of British India.

[*Commencement*]

Repealed by the Repealing Act, 1874 (XVI of 1874).

2. [*Repeal of Act XXXVI of 1855*]—*Repealed by the Repealing Act, 1873 (XII of 1873).*

Interpretation clause.

3 In this Act, "depositor" means a person by whom, or on whose behalf money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank, and "deposit" means money so deposited;

"Secretary" means in the case of a Post Office Saving Bank the Postmaster General appointed for the area in which the Saving Bank is situate"*

"Minor" means a person who is not deemed to have attained his majority the under Indian Majority Act, 1875 †

Deposits belonging to the Estates of deceased Persons.

Payment on death of depositor.

*"4 If a depositor dies and probate of his Will or letters of administration of his estate or a certificate granted under the Succession Certificate Act, 1889, is not within three months of the death of the depositor produced to the Secretary of the Government Savings Banks in which the deposit is, then—

(*a*) If the deposit does not exceed three thousand rupees, the Secretary may pay the same to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, or

(*b*) If the deposit does not exceed one hundred rupees, any officer employed in the management of a Government Savings Bank, who is empowered in this behalf by a general or special order of the Governor General in Council, may, subject to any general or special orders of the Secretary in this behalf, pay the deposit to any person appearing to him to be entitled to receive it or to administer the estate".

Payment to be a discharge.

5. Such payment shall be a full discharge from all further liability in respect of the money so paid.

Saving of right of executor

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts

* Substituted by Act 16 of 1923 † Substituted by Act 13 of 1916

or other demand, lawfully paid or discharged by him in due course of administration.

Saving of right of creditor.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act or* Act No. XXVI of 1855, to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased.

Security for due administration.

6. The Secretary of any such Bank (or any officer empowered under Section 4) † may take such security as he thinks necessary from any person to whom he pays any money under section 4 for the due administration of the money so paid, and he may assign the said security to any person interested in such administration.

Power to administer oath.

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank (or any officer empowered under Section 4)† may take evidence on oath or affirmation according to the law for the time being relating to oaths and affirmations.

Penalty for false statements.

Any person who, upon such oath or affirmation, makes any statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of an offence under section 193 of the Indian Penal Code.

Deposit when excluded in computing court-fees.

8. Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed three thousand rupees,‡ su[illegible] ng the fee[illegible] 1870, on the probate, or letters of [illegible] ted in respect of his property:

Provided that the person claiming such probate or letters or certificate shall exhibit to the [illegible] rtificate of the amount of the deposit [illegible] to the estate of the deceased. Su[illegible] tary of such Bank, and the Court shall [illegible]

Act not to apply to deposits belonging to estates of European soldiers or deserters.

9. Nothing hereinbefore contained applies to money belonging to the estate of any European Officer, non-commissioned officer or soldier dying in Her Majesy's Service in India or of any European who, at the time of his death was a deserter from the said service.

Deposits belonging to Minors.

Payment of deposits to minor or guardian.

10. Any deposit made by, or on behalf of, any minor may be paid to him personally if he made the deposit or to his guardian for his use if the deposit was made by any person other than the minor, together with the interest accrued thereon.

The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge therefor.

Legalization of like payments heretofore made.

11. All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law.

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* Certain words omitted by Act 12 of 1891. † Substituted by Act XVI of 1923
‡ Substituted by Act XVII of 1917.

Deposits belonging to Lunatics

Payment of deposits belonging to lunatics.

12. If any depositor becomes insane or otherwise incapable of managing his affairs,

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary may from time to time, make payments out of the deposit *to any proper person*,

and the receipt of such person, for money paid under this section, shall be a sufficient discharge therefor.

where a committee or manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such committee or manager

Deposits made by Married Women

Payment of married women's deposit.

13. Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act, 1865* section 4, applies to her marriage; and her receipt for money paid to her under this section shall be a sufficient discharge therefor

Rules.

Rule regulating certificates under section 8, and payments under section 10, 12 or 13.

14. All certificates under section 8, and all payments under section 10, section 12 or section 13, shall be respectively granted and made by the secretary of the Bank, subject to such rules consistent with this Act as the Governor General in Council may, from time *to time, prescribe.*

THE GOVERNMENT SEAL ACT, 1862.

ACT No. III OF 1862.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH FEBRUARY, 1862.

An Act to amend the Law relating to the use of a Government Seal.

Preamble.

WHEREAS it is expedient to adopt the law relating to the use of a Government Seal to the present form of the Government of India; It is enacted as follows:—

Seal to be used instead of Seal of the East India Company

Whenever it is required by any Regulation of a Local Government, or by any Act of the Governor General of India in Council, that the Seal of the East India Company shall be affixed on behalf or by the authority of the Government to any instrument or document, it shall be lawful, if the seal is to be affixed on behalf or by the authority of a Local Government, to affix in lieu of the seal of the East India Company a seal bearing the designation of such Local Government, or, if the seal is to be affixed on behalf or by the authority of the Government of India, a seal bearing the inscription "Government of India"; and such instrument or document so sealed shall to all intents and purposes be as valid and effectual as if the seal so used had been that of the East India Company

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* Act X of 1865.

THE INDIAN SECURITIES ACT, 1920.

ACT NO. X OF 1920.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 11TH MARCH, 1920.

An Act to Consolidate and Amend the Law relating to Government Securities.

WHEREAS it is expedient to consolidate and amend the law relating to Government securities ; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This act may be called the Indian Securities Act, 1920 ;

(2) It extends to the whole of British India, including British Baluchistan ; and

(3) It shall come into force on the first day of April, 1920.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Government security" means promissory notes (including treasury-bills), stock-certificates, bearer bonds and all other securities issued by the Governor General in Council or by any Local Government in respect of any loan contracted either before or after the passing of this Act, but does not include a currency note ; and

(b) "prescribed" means prescribed by rules made under this Act.

Notice of trust not receivable save as provided.

3. (1) Save as otherwise provided in or under this Act, no notice of any trust in respect of any Government security shall be receivable by the Government.

(2) The Government shall not be deemed to have received notice of any trust by reason only of the fact that it has recognised an indorsement on a Government security by an executor or administrator as such, nor shall it inquire into the terms of any Will by which such executor or administrator may be bound, but, on being satisfied of the due appointment of such executor or administrator, it shall be entitled to treat him as the full owner of any Government security belonging to the estate of the person whom he represents.

Right of survivors of joint or several payees of Government securities.

4. (1) Notwithstanding anything in section 45 of the Indian Contract Act, 1872,*—

(*a*) when a Government security is payable to two or more persons jointly, and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, and

(*b*) when a Government security is payable to two or more persons severally, and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, or to the representative of the dechased, or to any of them.

(2) This section shall apply whether such death occurred or occurs before or after this Act comes into force.

(3) Nothing herein contained shall affect any claim which any representatives of a deceased person may have against the survivor or survivors under or in respect of any security to which sub-section (1) applies.

* Act IX of 1872.

"*(4) For the purposes of this section, a body incorporated under the Indian Companies Act, 1913 † or the Co operative Societies Act, 1912 ‡ or any other enactment for the time being in force whether within or wi hout British India, relating to the incorporation of associations of individuals, shall be deemed to die when it is dissolved."

Indorsements to be made on security itself.

5. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881,§ no indorsement of a Government promissory note shall be valid unless made by the signature of the holder inscribed on the back of the security itself

Holding of Government securities by holders of public offices.

6 (1) In the case of any public office to which the Governor-General in Council may, by notification in the *Gazette of India*, declare this sub section to apply, a Government security may be made or indorsed payable to or to the order of the holder of the office by the name of the office.

(2) When a Government security is made or indorsed as aforesaid, it shall be deemed to be transferred without any or further indorsement from each holder of the office to the succeeding holder of the office on and from the date on which the latter takes charge of the office.

(3) When the holder of the office indorses to a third party a Government security made or indorsed as aforesaid, he shall subscribe the indorsement with his name and the name of the office

(4) A writing on a Government security now or heretofore standing in the name of the holder of a public office, whereby the security has been or was made or indorsed payable to or to the order of the holder of the office by the name of the office, shall not be deemed to be or to have been invalid by reason only [illegible] indorsed [illegible] an office of which there are two or more [illegible] ere is a single holder

Issue of securities to rulers of States in India.

7. Notwithstanding anything in the Negotiable Instruments Act, 1818,§ the Governor General in Council may, in respect of any loan, issue to the ruler of any State in India Government securities in such form and subject to such conditions as to negotiability, succession and other matters as may be prescribed

Indorser of Government security not liable for amount thereof.

8. Notwithstanding anything in the Negotiable Instruments Act, 1881,§ a person shall not, by reason only of his having indorsed a Government security, be liable to pay any money due either as principal or as interest, thereunder.

Impression of signature on Government securities.

9. (1) The signature of the person authorised to sign Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct on the securities

(2) A signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the person so authorised

Issue of duplicate, renewed, converted, consolidated or sub-divided securities,

Issue of duplicate securities.

10. (1) When a Government security is alleged to have been lost "stolen"‖ or destroyed either wholly or in part, and a person claims to be the person to whom but for the loss

* Inserted by Act II of 1928.
† VII of 1913
‡ II of 1912.
§ Act XXVI of 1881.
‖ Inserted by Act 21 of 1927.

THE INDIAN SECURITIES ACT, 1920.

ACT NO. X OF 1920.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 11TH MARCH, 1920.

An Act to Consolidate and Amend the Law relating to Government Securities.

WHEREAS it is expedient to consolidate and amend the law relating to Government securities; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This act may be called the Indian Securities Act, 1920;

(2) It extends to the whole of British India, including British Baluchistan; and

(3) It shall come into force on the first day of April, 1920.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "Government security" means promissory notes (including treasury-bills), stock-certificates, bearer bonds and all other securities issued by the Governor General in Council or by any Local Government in respect of any loan contracted either before or after the passing of this Act, but does not include a currency note; and

(b) "prescribed" means prescribed by rules made under this Act.

Notice of trust not receivable save as provided

3. (1) Save as otherwise provided in or under this Act, no notice of any trust in respect of any Government security shall be receivable by the Government.

(2) The Government shall not be deemed to have received notice of any trust by reason only of the fact that it has recognised an indorsement on a Government security by an executor or administrator as such, nor shall it inquire into the terms of any Will by which such executor or administrator may be bound, but, on being satisfied of the due appointment of such executor or administrator, it shall be entitled to treat him as the full owner of any Government security belonging to the estate of the person whom he represents.

Right of survivors of joint or several payees of Government securities.

4. (1) Notwithstanding anything in section 45 of the Indian Contract Act, 1872,*—

(a) when a Government security is payable to two or more persons jointly, and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, and

(b) when a Government security is payable to two or more persons severally, and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, or to the representative of the deceased, or to any of them.

(2) This section shall apply whether such death occurred or occurs before or after this Act comes into force.

(3) Nothing herein contained shall affect any claim which any representatives of a deceased person may have against the survivor or survivors under or in respect of any security to which sub-section (1) applies.

* Act IX of 1872.

"*(4) For the purposes of this section, a body incorporated under the Indian Companies Act, 1913 † or the Co operative Societies Act, 1912 ‡ or any other enactment for the time being in force whether within or wi hout British India, relating to the incorporation of associations of individuals, shall be deemed to die when it is dissolved."

Indorsements to be made on security itself.

5. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881,§ no indorsement of a Government promissory note shall be valid unless made by the signature of the holder inscribed on the back of the security itself

Holding of Government securities by holders of public offices.

6 (1) In the case of any public office to which the Governor-General in Council may, by notification in the *Gazette of India*, declare this sub section to apply, a Government security may be made or indorsed payable to or to the order of the holder of the office by the name of the office.

(2) When a Government security is made or indorsed as aforesaid, it shall be deemed to be transferred without any or further indorsement from each holder of the office to the succeeding holder of the office on and from the date on which the latter takes charge of the office.

(3) When the holder of the office indorses to a third party a Government security made or indorsed as aforesaid, he shall subscribe the indorsement with his name and the name of the office

(4) A writing on a Government security now or heretofore standing in the name of the holder of a public office, whereby the security has been or was made or indorsed payable to or to the order of the holder of the office by the name of the office, shall not be deemed to be or to have been invalid by reason only [illegible] indorsed [illegible] an office of which there are two or more [illegible] ere is a single holder.

Issue of securities to rulers of States in India

7 Notwithstanding anything in the Negotiable Instruments Act, 1818,§ the Governor General in Council may, in respect of any loan, issue to the ruler of any State in India Government securities in such form and subject to such conditions as to negotiability, succession and other matters as may be prescribed.

Indorser of Government security not liable for amount thereof.

8. Notwithstanding anything in the Negotiable Instruments Act, 1881,§ a person shall not, by reason only of his having indorsed a Government security, be liable to pay any money due either as principal or as interest, thereunder.

Impression of signature on Government securities.

9. (1) The signature of the person authorised to sign Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct on the securities

(2) A signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the person so authorised.

Issue of duplicate, renewed, converted consolidated or sub-divided securities,

Issue of duplicate securities

10. (1) When a Government security is alleged to have been lost "stolen"‖ or destroyed either wholly or in part, and a person claims to be the person to whom but for the loss

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* Inserted by Act II of 1928.
‡ II of 1912.
‖ Inserted by Act 21 of 1927
† VII of 1913.
§ Act XXVI of 1881.

"theft"* or destruction it would be payable, he may, on application to the prescribed officer, and on producing proof to his satisfaction of the loss "theft" * or destruction and of the justice of the claim and on payment of the prescribed fee, if any, obtain from him an order for—

(*a*) the payment of interest in respect of the security said to be lost "stolen" * or destroyed pending the issue of a duplicate security ; and

(*b*) the issue of a duplicate security payable to the applicant.

(2) An order shall not be passed under sub section (1) until after the issue of the prescribed notification of the lost "theft" * or destruction.

(3) A list of the securities in respect of which an order is passed under sub-section (1) shall be published in the prescribed manner.

"(4) If at any time before the Government becomes discharged under the provisions of this Act from liability in respect of any security the whole of which is alleged to have been lost, stolen or destroyed, such security is found, any order passed in respect thereof under this section shall be cancelled."*

Renewal of bearer bonds.

11. The holder of a bearer bond or other Government security payable to bearer may, on application to the prescribed officer, on delivery of the bearer bond or other security, and on payment of the prescribed fee, if any, obtain from such officer a renewed bearer bond or other security, as the case may be.

Renewal of promissory notes.

12. Subject to the provisions of section 13, a person claiming to be entitled to a Government promissory note, may, on applying to the prescribed officer, and on satisfying him of the justice of his claim and delivering the promissory note receipted in the prescribed manner, and paying the prescribed fee, if any, obtain from such officer a renewed promissory note payable to him :

Provided that, when application is made for the renewal of a Government promissory note which appears to the prescribed officer to stand in the name of a deceased member of a Hindu undivided [illegible] law, a renewed promissory note shall not be [illegible] furnishes a certificate signed by such aut[illegible] be prescribed to the effect that the deceased [illegible] family governed by the *Mitakshara* law, [illegible] of the joint property of the family, and that the applicant is the managing or sole surviving male member of the family.

Explanation.—The expression "Hindu undivided family governed by the *Mitakshara* law" shall, for the purposes of this section, be deemed to include a Malabar *tarwad*

Renewal of promissory notes in case of dispute as to title.

13. (1) Where there is a dispute as to the title to a Government promissory note in respect of which an application for renewal has been made, the prescribed officer may—

(*a*) where any party to the dispute has obtained a final decision from a Court of competent jurisdiction declaring him to be entitled to such note, issue a renewed note in favour of such party, or

(*b*) refuse to renew the note until such a decision has been obtained, or

(*c*) after such inquiry as is hereinafter provided and consideration of the result thereof, declare by order in writing which of the parties is in his opinion entitled to such note and may, after the expiration of three months from the date of such declaration, issue a renewed note in favour of such party in accordance with the provisions of section 12, unless within that period he has received notice that proceedings have been instituted by any person in a Court of competent jurisdiction for the purpose of establishing a title to such note.

* Inserted by Act 21 of 1927.

Explanation.—For the purposes of this sub-section the expression "final decision" means a decision which is not appealable or a decision which is appealable but against which no appeal has been filed within the period of limitation allowed by law.

(2) For the purpose of the inquiry referred to in sub-section (1), the prescribed officer may himself record, or may request the District Magistrate to record or to have recorded, the whole or any part of such evidence as the parties may produce. When such request has been made to the District Magistrate, such Magistrate may himself record or may direct any Magistrate of the first-class subordinate to him, or any Magistrate of the second-class subordinate to him and empowered by general or special order of the Local Government in this behalf, to record the evidence, and shall forward a copy thereof to the prescribed officer.

Explanation.—For the purposes of this sub section, the District Magistrate means the District Magistrate having jurisdiction in the place where interest on the promissory note is payable and, where interest is payable at a presidency town, the Chief Presidency Magistrate, or at a place in a State in India, the Political Agent.

(3) The prescribed officer or any Magistrate acting under this section may, if he thinks fit, record evidence on oath.

Renewal of other securities

14. Government securities other than those mentioned in sections 11 and 12 may be renewed in such circumstances and in such manner as may be prescribed.

Issue of converted, etc, securities.

15. (1) The prescribed officer may, subject to such conditions as may be prescribed, on the application of a person claiming to be entitled to a Government security or securities, on being satisfied of the justice of the claim and on delivery of the security or securities receipted in the prescribed manner and on payment of the prescribed fee, if any, convert, consolidate or subdivide the security or securities, and issue to the applicant a new security or securities accordingly

(2) The conversion, consolidation, or sub division referred to in sub-section (1) may be into a security or securities of the same or different classes or of the same or different loans

Liability in respect of promissory note renewed, etc.

16 (1) When a renewed Government promissory note has been issued under section 12, or a new Government promissory note has been issued upon conversion, consolidation or sub-division under section 15, in favour of any person, the note so issued shall be deemed to constitute a new contract between the Government and such person and all persons deriving title thereafter through him.

(2) No such renewal, conversion, consolidation or sub-division shall affect the rights as against the Government of any other person to the security or securities so renewed, converted, consolidated or sub-divided.

Discharge

Immediate discharge in certain cases

17 On payment by or on behalf of the Government to the holder of a bearer-bond or other Government security payable to bearer of the amount expressed therein on or after the date when it becomes due, or on renewal of a bearer bond or other security payable to bearer under section 11, or on renewal of a Government promissory note under section 13, or on conversion, consolidation or sub division of a bearer bond or other security payable to bearer under section 15, the Government shall be discharged in the same way and to the same extent as if such bearer bond, promissory note or other security were a promissory note payable to bearer :

Provided that, in the case of a Government promissory note renewed under section 13, nothing in this section shall be deemed to bar a claim against the Government in respect of such note by any person who had no notice of the preceedings under that section, or who derives title through any such person.

Discharge in other cases.

18. Save as otherwise provided in this Act—

(*i*) on payment of the amount due on a Government security on or after the date on which payment becomes due, or

(*ii*) when a duplicate security has been issued under section 10, or

(*iii*) when a renewed security has been issued under section 12 or section 13, [illegible] have been issued upon conversion, cons[illegible] 15, the [illegible] liability in respect of the security or securities so paid or in place of which a duplicate, renewed, or new security or securities has or have been issued—

(*a*) in the case of payment—after the lapse of six years from the date on which payment was due ;

(*b*) in the case of a duplicate security—after the lapse of six years from the date of the publication under sub-section (3) of section 10 of the list in which the security is first mentioned, or from the date of the last payment of interest on the original security, whichever date is later ;

(*c*) in the case of a renewed security or of a new security issued upon conversion, consolidation or subdivision—after the lapse of six years from the date of the issue thereof.

Discharge in respect of interest.

"*18A. Save as otherwise expressly provided in the terms of a Government security, no person shall be entitled to claim interest on any such security in respect of any period which has elapsed after the earliest date on which demand could have been made for the payment of the amount due on such security."

Summary procedure in certain cases.

Procedure on death of holder of securities not exceeding an aggregate value of five thousand rupees.

19. (1) If within six months of the death of a person who was entitled to a Government security or securities (other than a security payable to bearer) the nominal or face value of which does not in the aggregate exceed five thousand rupees, probate of the Will or letters of administration of the estate of such person or a certificate granted under the Succession Certificate Act, 1889,† is not produced to the prescribed officer, such officer may, after inquiry in the manner provided in sub sections (2) and (3) of section 13, determine who is the person entitled to the security or securities or to administer the estate of the deceased, and may—

(*a*) in the case of any such security relating to a loan due for repayment, authorise payment of the amount due thereon to such person ; and

(*b*) in the case of any such security relating to a loan not due for repayment, authorise, in the case of a promissory note, the renewal of such promissory note in favour of such person, or, in the case of stock, the registration of the name of such persons in substitution for the name of the deceased.

(2) Upon the payment or renewal of any promissory note in accordance with sub section (1), the Government shall be discharged from all liability in respect of the note so paid or renewed ; and any substitution of names made in accordance with clause (*b*) of sub section (1) shall, for the purposes of any claim against the Government, be deemed to have effected a valid transfer of the stock in respect of which it was made.

* Inserted by Act XXI of 1927. † Act VII of 1889.

(3) Any creditor or claimant against the estate of the deceased may recover his debt or claim out of money paid to any person under sub-section (1) and remaining in his hands unadministered in the same manner and to the same extent as if the said person had obtained letters of administration of the estate of the deceased, and nothing in this section shall affect any claim of an executor or administrator or other representative of the deceased agaist such person other than a claim to recover amounts lawfully paid by him in due course of administration of the estate of the deceased.

Securities held by minors and lunatics.

Payment in case of securities held by minors and lunatics

20. Where a Government security stands in the name of or is held by a minor or a person who is insane and incapable of managing his affairs, the interest accruing thereon, or the capital sum payable in respect thereof on the maturity or discharge of the loan, shall, where, in the case of interest payable, the nominal value of the security, or in other cases the sum payable, does not exceed five thousand rupees, be paid in such manner as may be prescribed, and on any payment being so made, the Government shall, notwithstanding any provision of any enactment to the contrary, be discharged from all liability in respect thereof.

Indemnity.

Indemnity

21. Notwithstanding anything in section 10, 12, 13 or 15, the prescribed officer may in any case arising under any of those sections—

(i) issue a duplicate or renewed security or convert, consolidate or subdivide a security or securities upon the
nity against the claims of all persons
under the security or securities so rene
divided, as the case may be, or

(ii) refuse to issue a duplicate or renewed security or to convert, consolidate or sub-divide a security or securities unless such indemnity is given.

Inspection of registers, books and documents.

Inspection of documents

22. No person shall be entitled to inspect, or to receive information derived, from any Government security in the possession of the Government or from any book, register or other document kept or maintained by or on behalf of Government in relation to Government securities or any Government security, save in such circumstances and manner and subject to such conditions as may be prescribed.

Penalty.

Penalty

23 (1) If any person, for the purpose of obtaining for himself or for any other person payment of interest or of the capital sum due in respect of any Government security, or the issue of a duplicate security, or the renewal, conversion, consolidation or subdivision of a Government security or securities, makes to any authority under this Act a statement which is false and which he either knows to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) No Court shall take cognizance of any offence under sub section (1) sav on the complaint of the authority to whom the false statement was made.

Rules.

24. (1) The Governor-General in Council may after previous publication make rules to carry out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which payment of interest in respect of Government securities is to be made and acknowledged;

(b) the circumstances in which Government securities must be renewed before further payment of interest thereon can be claimed;

(c) the form in which and the conditions subject to which Government securities may be issued to the rulers of States in India;

(d) the fees to be paid in respect of the issue of duplicate securities and of the renewal, conversion, consolidation and sub-division of Government securities;

(e) the proof which is to be produced by persons applying for duplicate securities;

(f) the form and manner of publication of the notification mentioned in sub section (2) or section 10 and the manner of publication of the list mentioned in sub section (3) of that section;

(g) the officer who is to exercise all or any of the powers and to perform all or any of the duties referred to in sections 10, 11, 12, 13, 15, 19 and 21;

(h) the manner of making the inquiry mentioned in the proviso to section 12;

(i) the circumstances and the manner in which securities other than securities payable to bearer or promissory notes are to be renewed;

(j) the form in which securities delivered for discharge, renewal, conversion, consolidation or sub-division are to be receipted;

(k) the conditions subject to which securities may be converted, consolidated or sub divided;

(l) the person to whom and the manner in which payments are to be made in respect of Government securities standing in the name of, or held by, minors or persons who are insane and incapable of managing their affairs;

(m) the taking of indemnities against adverse claims of third parties from persons who receive payment of interest or of the capital sum due in respect of Government securities, or who obtain duplicate, renewed, converted, consolidated or sub divided securities;

(n) the manner in which any document relating to Government securities or any indorsement on a Government promissory note may, on the demand of any person who from any cause is unable to write, be executed on his behalf;

(o) enabling holders of Government stock to be described in the registers of such stock as trustees, and either as trustees of any particular trust or as trustees without qualification, and for the recognition of powers of attorney granted by holders of stock so described;

(p) the holding of Government stock by the holders of offices other than public offices, and the manner in which and the conditions subject to which stock so held may be transferred;

(q) the mode of attestation of documents relating to Government stock;

(r) generally, all matters connected with the grant of duplicate, renewed, converted consolidated and sub-divided securities; and

(s) the circumstances and the manner in which and the conditions subject to which, inspection of securities, books, registers and other documents may be allowed or information therefrom may be given under section 22.

(3) *Nothing in* any rule made under clauses (o) and (p) shall, as between any trustees or as between any trustees and the beneficiaries under a trust, be deemed to authorise the trustees to act otherwise than in accordance with the

rules of law applying to the trust and the terms of the instrument constituting the trust; and neither the Government nor any person holding or acquiring any interest in any Government stock shall by reason only of any entry in any register maintained by or on behalf of the Government in relation to any Government stock or any stockholder, or of anything in any document relating to Government stock, be affected with notice of any trust or of the fiduciary character of any stockholder of any fiduciary obligation attaching to the holding of any Government stock.

(4) Rules made under this section shall be published in the *Gazette of India*, and shall thereupon have effect as if enacted in this Act

25. [*Repeals.*]—*Repealed by the Repealing Act*, 1927 (XII of 1927).

THE GOVERNMENT TRADING TAXATION ACT.

ACT NO III OF 1926.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 24TH FEBRUARY, 1926.

An Act to determine the liability of certain Governments to taxation in British India in respect of trading operations

WHEREAS it is expedient to determine the liability to taxation for the time being in force in British India of the Government of any part of His Majesty's Dominions, exclusive of British India, in respect of any trade or business carried on by or on behalf of such Government, It is hereby enacted as follows :—

Short title and commencement.

1. (1) This Act may be called the Government Trading Taxation Act, 1926.

(2) It shall come into force on such date as the Governor-General in Council may, by notification in the *Gazette of India*, appoint

Liability of certain Governments to taxation in respect of trading operations.

2. (1) Where a trade or business of any kind is carried on by or on behalf of the Government of any part of His Majesty's Dominions, exclusive of British India, that Government shall in respect of the trade or business and of all operations connected therewith, all property occupied in British India and all goods owned in British India for the purposes thereof, and all income arising in connection therewith, be liable—

(*a*) to taxation under the Indian Income-tax Act, 1922,* in the same manner and to the same extent as in the like case a company would be liable;

(*b*) to all other taxation for the time being in force in British India in the same manner as in the like case any other person would be liable

(2) For the purposes of the levy and collection of income-tax under the Indian Income-tax Act, 1922, in accordance with the provisions of sub-section (1), any Government to which that sub-section applies shall be deemed to be a company within the meaning of that Act, and the provisions of that Act shall apply accordingly.

(3) In this section the expression "His Majesty's Dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions

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* Act XI of 1922.

THE GUARDIANS AND WARDS ACT, 1890.

ACT NO. VIII OF 1890.

RECEIVED THE G.-G'S ASSENT ON THE 21ST MARCH, 1890.

An Act to consolidate and amend the law relating to Guardian and Ward.

WHEREAS it is expedient to consolidate, and amend the law relating to guardian and ward; It is hereby enacted as follows:—

Consolidate and amend the . . were in force were Act XL of 1858 (Bengal Minor . mbay Minors Act). The only difference between . the former is imperative whilst Act VIII of 1890 is permissive. Under the old Act no person was entitled to institute or defend any suit connected with the estate of a minor unless he had obtained a certificate or unless the estate was of small value. Under the present Act, the Court has the power of appointing a next friend or guardian for any suit for or against a minor, but it is not necessary that the person so appointed should be a guardian under the Act. 19 C. 301. A person appointed a guardian by a Will need not take out probate, in order to obtain a certificate of guardianship under the Act. 19 B. 832. A guardian cannot be appointed to the property of a minor coparcener, having no separate property. 19 B. 309 (F. B.). It is open to a father to institute a regular suit for recovering the custody of his children The Guardians and Wards Act nowhere lays down that his only remedy is an application under the Act. *3 Bom. L. R 167=25 B 574; see also 1 C. P. L. R 135.* The *jurisdiction* of the Court conferred by the Act cannot be ousted by any agreement *inter partes.* 4 Bom. L. R. 963. Personal law is abrogated only to the extent laid down in the Act. 137 Ind. Cas. 219=54 A. 128=1932 A. L. J. 21=A. I. R. 1932 All. 215. Where remedy is obtainable under the Guardians and Wards Act, power under s. 491 Cr. Pro. Code is not to be exercised. 1934 A. L. J. 946.

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. (1) This Act may be called the Guardians and Wards Act, 1890.

(2) It extends to the whole of British India, inclusive of* British Baluchistan; and

(3) It shall come into force on the first day of July, 1890.

(*Not followed in 31 M. 362=18 M. L. J. 252=3 M. L. T. 264*).

Repeal.

2. (1) On and from that day the enactments mentioned in the schedule shall be repealed to the extent specified in the third column thereof.

(2) But all proceedings had, certificates granted, allowances assigned, obligations imp . . made under any of . respectively had, .

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

*Here the words "*Upper Burma and*" have been omitted, as being repealed by Act XIII of 1898.

Saving of jurisdiction of Courts of Wards and Chartered High Courts.

3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor-General in Council or by a Governor or Lieutenant Governor in Council; and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the Statute 24 and 25 Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*).

Notes.—The High C
estate irrespective of the (
50 C. 141. Section 9 of tl
jurisdiction for entertainm
guardians for infants ha
N. W. P. High Court in reference to the same matter. 2 A. L. J. 81; 2 N. W. P. 79; see also 21 B. 137; This power can be exercised only by chartered High Courts. 59 Ind. Cas. 562=13 Bur. L. T. 86.

Definitions.

4. In this Act, unless there is something repugnant in the subject or context,—

(1) "minor" means a person who, under the provisions of the Indian Majority Act, 1875,* is to be deemed not to have attained his majority;

(2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property,

(3) "ward" means a minor for whose person or property, or both, there is a guardian;

(4) "District Court" has the meaning assigned to that expression in the Code of Civil Procedure,† and includes a High Court in the exercise of its ordinary original civil jurisdiction:

"(5

this

such application—

(i) the Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian; or

(ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides; or

(c) in respect of any proceeding tranferred under section 4 A, the Court of the officer to whom such proceeding has been transferred "‡

(6) "Collector" means the chief officer in charge of the revenue administration of a district, and includes any officer whom the Local Government, by notification in the official Gazette, may, by name or in virtue of his office, appoint to be a Collector in any local area, or, with respect to any class of persons, for all or any of the purposes of this Act.

(7) "European British subject" means an European British subject as defined in the Code of Criminal Procedure, 1882,§ and includes any Christian of European descent; and

(8) "prescribed" means prescribed by rules made by the High Court under this Act.

Notes.—A *defacto* Guardian is a guardian 51 Ind. Cas 236; 48 Ind Cas. 60=21 O. C 194

District Court.—*Vide* 26 Ind. Cas 709=10 N L. R. 161, 59 Ind Cas 562=13 Bur. L. T. 86.

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* Act IX of 1875.
† Act XIV of 1882.
‡ Substituted by Act IV of 1926.
§ See Section 1 of Act V of 1898.

European British subjects—*Vide* 1 B. L. R O C. 10; 8 B. L. R. 372.

Guard ... d. Cas. 541; 73 P. R 1919. Guardian ... by Court. 137 Ind. Cas. 219=1932 ... Person who is in possession of minor's ... 34 A. L. J. 946; See also A. ... d in a wide sense and does not ... by the Court, but includes ... *shiram Sharosh baun*, A. I. R. ... 5 Oudh 492.

Ward.—"Ward" includes minor who has guardian, though not appointed under the Act. A. I. R. 1935 Oudh 492.

Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.

"4A. (1) The High Court may, by general or special order, empower any officer exercising original civil jurisdiction subordinate to a District Court or authorise the Judge of any District Court to empower any such officer subordinate to him, to dispose of any proceedings under this Act transferred to such officer under the provisions of this section.

(2) The Judge of a District Court ... stage any proceeding under this Ac... officer subordinate to him empowered ...

... this section in any case ... , the Judge of the District Court may, by order in writing, declare that the Court of the Judge or officer to whom they are transferred shall, for all or any of the purposes of this Act, be deemed to be the Court which appointed or declared the guardian."*

Notes—"In order to lighten the work of th... Committee has recommended that provision... High Court may authorise, by general or speci... take cognizance of or any District Judge, to ... his control any proceedings under the Gua... effect to the proposals of the committee Unc... power to transfer all the proceedings relating ... to him who has been specially empowered and any particular matter connected with an estate."—

CHAPTER II.

Appointment and Declaration of Guardians.

Power of parents to appoint in case of European British subjects.

5. (1) Where a minor is a European British subject, a guardian or guardians of his person or property, or both, may be appointed, by Will or other instrument to take effect on the death of the person appointing,—

(*a*) by the father of the minor, or,

(*b*) if the father is dead or incapable of acting, by the mother.

(2) Where guardians have been appointed under sub section (1) by both parents, they shall act jointly.

Notes.—"This section follows Act XIII of 1874, which in recognizing in certain circumstances the right of mother to appoint guardian was based on the New York Civil Code. The section goes beyond section 47 of the Indian Succession Act (=s. 60 of Act XXXIX of 1925), and beyond the English law. But under the

* Substituted by Act IV of 1926.

English law, an appointment by a mother is not now wholly ineffectual, and is likely at no distant date to be declared to be valid except in as far as it may interfere with an appointment by the father."—*Statement of Objects and Reasons.*

Father.—"By the law of England" said *Lord Esher* in the case of *In re Agar Ellis* 29 Ch D. 317, "the father has the control over the person, education and conduct of his children until they are twenty one." "The Court of Chancery" said *Vice Chancellor Bacon*, in *Re Plomby*, 47 T. L. R 28; "has no right to interfere with the sacred right of a father over his own children." A minor father can appoint a guardian by Will. *Vide* s. 60 of the Succession Act.

Mother.—In the case of *In re A & B (Infants)*, (1897) 1 Ch. 786, it was held that the Court had full jurisdiction to override entirely the common law rights of the father in the interest of the mother. By section 3(1) of the Guardianship of Infants Act, 1886 (49 & 50 Vict, c. 27) the mother herself may by, deed or Will appoint any person to be guardian after her death So by English law not only a father but a mother also under certain circumstances can appoint a guardian or guardians of his child during minority if he is not married at that time. *Atherly Jones Law of Children*, pp 93-97 Before the passing of the Act, a mother even if a widow [illegible] *Edwards*, 3 Atk. 517 ; *Blake* v. *Blake*, [illegible] 2 P. Wms. 103. A *minor mother cannot* [illegible]

Illegitimate Children.—A father has no legal power to appoint a testamentary guardian of his illegitimate children. *Sleeman* v. *Wilson*, 13 Eq. 36 ; *Re. Ulee*, 53 L T. 711 ; 54 L. T. 286. As to the rights of the mother of an illegitimate children, *vide Reg*, v. *Nash*, 10 Q B D. 454.
Burnards v. *McHugh* (1891), 1 Q. B. 194 : (1891) A. C. 388 : 54 L. T. 286.

Attestation by guardian—An instrument appointing a testamentary guardian is valid though attested by the guardian. *In Bonis Parnell*, 2 P. & D 379.

How guardians are appointed.—No precise words are necessary to appoint a testamentary guardian. Thus it is sufficient to direct that the children are to be brought up under the care and direction of a certain person, or that he is to have the management and care of the house and children or that he is to take care to see the child educated. *Theobold*, p. 98 citing *Bridges* v. *Habses*, Mosley, 109 , *Miller* v. *Harris*, 14 Sim. 540 ; *Lady Tyaham* v. *Lennard*, 4 B P. C. 302 ; see also 21 C. W. N. 1134 ; 21 C. 206 ; *Mendes* v. *Mendes*, (1747) 1 Ves Sen. 89.

Saving of power to appoint in other cases.

6 In the case of a minor who is not an European British subject, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

Notes.—Accordi[illegible] writing or by word, a [illegible] children. 7 W. R. 74 [illegible] no authority to appoi[illegible] 401=8 M. L. J. 112. [illegible] family consisting of himself and his minor co-parceners to appoint a testamentary guardian to the co-parcenary properties of the minor co-parceners. 41 M. 461=34 M. L. J. 381=45 Ind. Cas. 905 (F.B.). A person who is not a lawful guardian himself under a minor's personal law, cannot appoint a guardian for minor's person. 66 P. W. R. 1910=48 P. R 1910=6 Ind. Cas. 734=52 P. L. R. 1910. Under Hindu law a man has no power to appoint a guardian of his minor nephew, and any provision in a Will made by a Hindu testator appointing a guardian of his nephew is not binding on Courts under s. 7 (3). 220 P. L. R. 1911,

Power of the Court to make order as to guardianship

7. Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

(a) appointing a guardian of his person or property, or both or,
(b) declaring a person to be such a guardian,

the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by Will or other instrument, or appointed or declared by the Court.

(3) Where a guardian has been appointed by Will or other instrument, or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

Welfare of the Minor—In considering whether an order should be made appointing a guardian for a minor, the welfare of the minor is the paramount consideration in the case. Where a Court is satisfied that it is for the welfare of the minor that a guardian should be appointed, an order of appointment should be made. If the Court is not so satisfied the order cannot be made 11 Ind. Cas 478=231 P. L. R. 1911=196 P. W. R. 1911; see also, 42 C. 953; 18 C W. N. 160, 16 Ind. Cas. 900; *Johnstone* v. *Beattie*, 10 Cl. & F. 42: 29 A. 210, 84 P. R. 1891 From the earliest time the State is considered to be the guardian of the infants and this principle is given effect to by the earliest regulations. When the State assumes this duty it is bound to bring up the boy in the same manner as his natural father or guardian would have done, that is, in the tradition of the family to which after becoming a major he has to revert. 5 Pat. L. T. 415=2 Pat. L. R. 200=81 Ind. Cas. 1045=1924 Pat. 755 The key-note of the Act lies in the introductory words of this section; the proceedings are to be taken for the benefit of the minor and the minor alone. If an application has been made for an ulterior purpose, such application ought not to be entertained. 7 Ind. Cas. 702=15 C. W. N. 457, 67 Ind Cas 882=3 Lah. L. J. 239; 16 C W. N. 447, 54 Ind. Cas. 418=18 A L. J. 71; 75 Ind Cas 496=A. I. R. 1923 Lah. 283. Person applying to be appointed as guardian need not be residing within jurisdiction of Court to which application is made Court should appoint best person regardless of his place of residence. A. I R. 1933 All. 780=1933 A. L J. 1333; see also A. I R. 1932 Cal 730=36 C. W. N. 769=55 C. L J. 358.

Clauses (a) and (b)—This section makes a distinction between appointing a guardian and declaring a person to be one. A guardian is declared when, for instance, he has been appointed under some independent instrument such as a Will By the declaration the Court merely gives effect to the appointment. 11 Bom L. R. 384=2 Ind Cas. 484.

[illegible] ointment as [illegible] accordance [illegible] of a joint [illegible] competent to a Court to appoint any person guardian of the minor's interest in that property. [illegible] P. W R 1909=1 Ind. Cas. 745 In appointing [illegible] whether such appointment is necessary. A I. [illegible] 72=34 Ind. Cas. 766=30 M. L. J. 504; 16 C. [illegible] nd Cas 507; 54 Ind. Cas 418=18 A L J. 71; [illegible] Discretion exercised by single judge should not [illegible] 33 Lah. 881=144 Ind. Cas 672. High Court has inherent jurisdiction to appoint guardian 59 C 570=A. I. R. 1932 Cal. 502. Where sufficiently grown up children do not want guardian, no guardian should be appointed 8 O. W. N. 529=A. I. R. 1931 Oudh 236 Appointment based on compromise is valid, where validity of Will is questioned A I R 1933 Lah 220=34 P. L. R. 17. In appointing a guardian of a Mahomedan child, the Court is to be guided by this Act and no Mahomedan Law. A. I. R. 1933 Rang 201=145 Ind. Cas. 843.

Declaration of guardian—This section is inapplicable to non-cupative Wills. [illegible]

valid, effect should be given to its provisions as regards the property of the minor. 16 M. L. J. 357.

Order appointing a guardian.—So far as the infant is concerned he is put in the position of a ward as soon as the Court has made up its mind as to the matters set out in cls (a) and (b); and the proviso that the guardian should give security is merely an additional precaution to protect the interest of the infant. The effect of the order requiring security is to suspend the act of the guardian till he gives security. But as soon as an order is made under this section the infant becomes a minor and remains a ward irrespective of
he attains the age of 21 years 4 C. L. J. 112 ;
2 Agra 338 ; 15 C. 40, 14 C 55 ; 14 C 347 (P. C
respect of trust property in the hands of a minor. 39 A. 288; *contra*, 42 Ind. Cas. 273 ; 40 M. 672 ; 1 Pat. 432. Order appointing a guardian can be reconsidered on the face of fresh facts put forward by the opposite party. 34 C W. N. 763=130 Ind. Cas. 444=A. I. R. 1931 Cal. 59.

Joint Hindu family.—Under the Act, it is not competent to Court to appoint a guardian of the property of a minor who is a member of a Joint Hindu family. 17 A 522=A. W. N. 1895, 119 ; 20 A. 400=A W. N. 1898, 94 ; A W. N. 1896 30 ; 165 P L R 1906 ; 25 A. 407 (416) P. C ; 43 P R. 1909=1 Ind. Cas 745 ; 3 B 431, 8 B 395 ; 30 B 152 ; 32 M. 139, 21 Ind Cas 848; 40 Ind. Cas 145 ; 43 Ind Cas. 865 ; 45 Ind Cas 905, 46 Ind. Cas 815 ; 19 C. 501. This rule applies *to the case of a minor belonging to an Allyas santhana family, where the only right* of the infant is a right to be maintained in the family house. 4 M. L. T 462=32 M. 139=1 Ind Cas. 999. But this rule does not apply where all the co-parceners are minors and a guardian of the property is appointed for the whole number 30 B. 152=7 Bom L R. 809, see also 32 B 259, 1896 P. J 521, 35 A. 150=18 Ind. Cas 251 But when subsequently one of the group arrives at the age of majority the guardianship of the person so appointed by Court must cease. 10 Bom L R. 279=32 B. 259 ; 57 Ind. Cas 678. The High Court under its general jurisdiction
of a minor who is member of a
see also 59 C. 141. But it is open
even when the minor belongs
a law. 57 Ind. Cas 678=11 L. W. 596 ; 34 Ind. Cas 766=40 M. 672=30 M. L. J. 504 ; 21 B. 281 ; 17 A. 529 ; 20 A. 400 ; 19 B. 309 ; 23 P. R. 1910=5 Ind. Cas 887.

When minor not entitled to immediate possession—There is nothing in the Act to prevent a Court from appointing a guardian of a minor in respect of *property which are in the actual possession of an executor under a Will and to the* immediate possession of which the minor is not entitled. 70 Ind Cas 360 ; see also 66 Ind. Cas 261=48 C. 802, *contra*, 6 Ind. Cas. 862 ; *Salisbury In re*, 44 L J. Ch. 541 ; 15 C. W. N 558.

Appeal—No appeal or revision lies from an order removing a guardian. A. I. R. 1934 Lah 323 No appeal lies from interlocutory order refusing guardianship application as regards property of minor. 38 C. W. N. 1083.

Sub-section. (2).—When a guardian is appointed under this Act, persons other than such guardian can not bind the estate of the minor. Under this sub section, the appointment of a guardian by Court implies the removal of the one not so appointed 19 M. L. T. 385=2 M. W. N. 1911 461=21 M. L. J. 1077 ; see also 36 M. L. J. 189=51 Ind Cas 236 ; 12 Ind. Cas 568=37 M. 38 ; 27 B. 390, 50 Ind. Cas 580

Sub-section (3)—When a guardian has been appointed for a minor under a Will, the District Court cannot appoint another person as guardian in his stead under this sub section, *until it finds after due investigation that the Will is invalid.* 17 B. 560 ; see also 42 C. 952=19 C. W N. 513=28 Ind Cas 972 ; 39 P, R. 1893 ; 21 C. 206, 22. M 40 This section is not applicable to non cupative Wills. 54 P. R. 1898, see also 16 L W 445 ; 1922 M. W. N. 167=66 Ind. Cas. 216. Any provision in a Will made by a Hindu testator appointing a guardian of his nephew is not binding on Court under this subsection. 220 P. L. R. 1911 ; see also 6 Ind. Cas. 1344=8 P. R. 1910 Where only a testamentary guardian has been appointed of a minor's person, a guardian can be appointed of his property. 13 W. R. 230.

Persons entitled to apply for order.

8. An order shall not be made under the last foregoing section except on the application of—

(a) the persons desirous of being or claming to be, the guardian of the minor or

(b) any relative or friend of the minor, or

(c) the Collector of the district or other local area within which the minor ordinarily resides, or in which he has property, or

(d) the Collector having authority with respect to the class to which the minor belongs.

court has no power to make an order appoint- substantive application. 14 C. L. J 226=15 C. 783 135 P. R 1803 But see 4 Ind. Cas. 255 of ...tion =16 Ind Cas. 900 In an application for nor the Court has really to see what is for the W. N 1907, 24=29 A. 210 After dismissal ond application for the appointment of the sa Cas. 291. But a second application for the appointment of another person or an application by another person is not barred. 1 A. 428; 137 P. R. 1893 A second application is also maintainable when the first application has been dismissed for default. 17 C. W. N. 429 A debtor offered to deposit in Court

1933 Oudh 312=10 O. W. N. 635.

Court having jurisdiction to entertain application.

9. (1) If the application is with respect to the guardianship of the person of the minor it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property

(3) If an application with respect to minor is made to a District Court other than where the minor ordinarily resides, the Co its opinion, the application would be disposed ... by any other District Court having jurisdiction.

Notes—This section, conferring on District Courts, jurisdiction for entertainment and disposal of applications for the appointment of guardians for infants, has not taken away the jurisdiction already possessed by the N. P. W. High Court in reference to the same matter. 2 A. L. J 81. The words 'ordinarily resides' in this section mean more than a temporary residence even though the period of such temporary residence may be considerable. 53 P. L. R. 1902, 7 B. H. C. R. A. C 7; 38 M. 807=24 Ind. Cas 200 (P. C) The question of domicile is wholly irrelevant to the question of jurisdiction 11 Bom. L. R 1137=34 B. 121=4 Ind. Cas. 262, 8 Bur. L. T. 73=29 Ind. Cas. 890.

1932 Bom 592=34 Bom. L. R. 1292.

Clause (2).—*Vide* 36 A. 280=24 Ind. Cas. 59=12 A. L. J. 392.

Form of application.

10. (1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure* for the signing and verification of a plaint, and stating so far as can be ascertained,—

(a) the name, sex, religion, date of birth and ordinary residence of the minor;

(b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;

(c) the nature, situation and approximate value of the property, if any, of the minor;

(d) the name and residence of the person having the custody or possession of the person or property of the minor;

(e) what near relations the minor has, and where they reside;

(f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

(g) whether an application has at any time been made to the Court, or to any other Court with respect to the guardianship of the person or property, or both, of the minor; and, if so, when, to what Court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property or of both;

(i) where the application is to appoint a guardian, the qualifications of

to declare a person to be a guardian, the

(k) the causes which have led to the making of the application; and

prescribed or as the nature

it shall be by letter addressed to the Court, and forwarded by post, or in such other manner as may be found convenient, and shall state, as far as possible, the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him, and attested by at least two witnesses.

Notes.—An application should be in the form mentioned in this section. But it is not necessary that a counter application should be made in the form prescribed

Procedure on admission of application.

11. (1). If the Court is satisfied that there is ground for preceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

(a) to be served in the manner directed in the Code of Civil Procedure* on—

(i) the parents of the minor if they are residing in British India,

* Act XIV of 1882.

Persons entitled to apply for order.

8. An order shall not be made under the last foregoing section except on the application of—

(*a*) the persons desirous of being or claming to be, the guardian of the minor or

(*b*) any relative or friend of the minor, or

(*c*) the Collector of the district or other local area within which the minor ordinarily resides, or in which he has property, or

(*d*) the Collector having authority with respect to the class to which the minor belongs.

has no power to make an order appoi[illegible] antive application. 14 C. L. J 226=15 ; 135 P. R. 1893 But see 4 Ind. Cas [illegible] I. R. 1923 Oudh 126. A petition of [illegible] =16 nor [illegible] W. N. 1907, 24=29 A. 210 After dismissal [illegible] ond application for the appointment of the same person is not maintainable. 68 Ind. Cas 291 But a second application for the appointment of another person or an application by another person is not barred. 1 A. 428; 137 P. R. 1893. A second application is also maintainable when the first application has been dismissed for default. 17 C. W. N. 429. A debtor offered to deposit in Court the amount alleged by him to be in deposit with him on behalf of a minor and asked the Court to appoint a guardian for a minor in respect of the amount. The minor's right to the fund was disputed by third person *Held* that the [illegible] f the amount under [illegible] He had therefore [illegible] A. I. R. 1934 Mad. [illegible] rson alleging minor [illegible] guardian. A. I R. 1933 Oudh 312=10 O. W. N. 635.

Court having jurisdiction to entertain application.

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(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if, in its opinion, the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

Notes—This section, conferring on District Courts, jurisdiction for entertainment and disposal of applications for the appointment of guardians for infants, has not taken away the jurisdiction already possessed by the N. P. W. High Court in *reference to the same matter. 2 A. L. J 81. The words 'ordinarily resides'* in this section mean more than a temporary residence even though the period of such temporary residence may be considerable. 53 P. L. R. 1902, 7 B. H. C R. A. C. 7, 38 M. 807=24 Ind. Cas 200 (P. C) The question of domicile is wholly irrelevant to the question of jurisdiction 11 Bom. L. R. 1137=34 B. 121=4 Ind. Cas. 262, 8 Bur L. T. 73=29 Ind. Cas 890.

Clause (1)—An application with respect to the guardianship of the person of the minor must be made to the district Court having jurisdiction in the place where the minor ordinarily resides 36 A. 280=24 Ind. Cas. 59=12 A. L. J. 392. Considerations of convenience are relevant only when minor is resident of two districts. A. I. R. 1932 Bom 592=34 Bom. L. R. 1292.

Clause (2).—*Vide* 36 A. 280=24 Ind. Cas. 59=12 A. L. J. 392.

10. (1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure* for the signing and verification of a plaint, and stating so far as can be ascertained,—

Form of application.

(*a*) the name, sex, religion, date of birth and ordinary residence of the minor;

(*b*) where the minor is a female, whether she is married, and, if so, the name and age of her husband;

(*c*) the nature, situation and approximate value of the property, if any, of the minor;

(*d*) the name and residence of the person having the custody or possession of the person or property of the minor;

(*e*) what near relations the minor has, and where they reside;

(*f*) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

(*g*) whether an application has at any time been made to the Court, or to any other Court with respect to the guardianship of the person or property, or both, of the minor; and, if so, when, to what Court and with what result;

(*h*) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property or of both:

(*i*) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(*j*) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(*k*) the causes which have led to the making of the application; and

to the Court, and forwarded by post, or in such other manner as may be found convenient, and shall state, as far as possible, the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him, and attested by at least two witnesses.

Notes.—An application should be in the form mentioned in this section But it is not necessary that a counter application should be made in the form prescribed in this section. 105 P. L. R 1933; see also 149 Ind. Cas 708=1934 A L J. 652=A. I R. 1934 All. 849 The omission to give in the application the several particulars mentioned in sub-section (1) non-fulfilment of sub-ss. (2) and (3) and non observance of the procedure laid down in secti[illegible] whole proceedings and the order [illegible] 1910=74 P. L R. 1910=6 Ind. C. [illegible] the application should be stated. [illegible] proved. 4 Ind Cas, 744. An application should not be usually granted when the minor will attain the age of 18 years a few months after. 231 P. L. R, 1911=11 Ind. Cas. 478; 18 Ind. Cas. 987=17 C W. N 429: 1900 P. L. R. 419, 6 C. 19.

11. (1). If the Court is satisfied that there is ground for preceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

Procedure on admission of application.

(*a*) to be served in the manner directed in the Code of Civil Procedure* on—

(*i*) the parents of the minor if they are residing in British India,

* Act XIV of 1882.

(*ii*) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,
(*iii*) appointed or declared gu
(iv) special notice of the application should be given ; and
(*b*) to be posted on some conspicuous part of the Court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) *The Local Government may, by general or special order, require that,* when any part of the property described in a petition under section 10, sub-section (1) is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub section (2).

Notes.—Non-observance of the procedure laid down in this section is a grave irregularity. 58 P. W. R. 1910=74 P. L. R. 1910=6 Ind. Cas. 645 ; see also 17 W. R. 269 ; 20 Ind. Cas. 578.

Sub section (1).—Failure to comply with the provisions of the section as to the service of notice of the application is not a fatal defect which would invalidate the proceedings of the Court, as all the parties interested are already before the Court. 16 Ind. Cas. 900=17 C. W. N.

also 18 O. C. 66=27 Ind. Cas.
service of notice on a person re...
Cas. 255. The object of section 11 is to give an opportunity to all the persons having an interest in the minor, of being heard before an order appointing a guardian is passed. 149 Ind. Cas. 708=A. I. R. 1934 All. 849=1934 A. L. J. 652

Sub-section (2).—No notice is necessary where the prayer is only for appointment of a guardian of a minor's person. 25 Bom. L. R. 1232

Power to make interlocutory order for production of minor and interim protection of person and property.

12 (1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary *custody and protection* of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorize—
(a) the Court to ... of a person claiming to be ... unless she is already in ...
(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law, any person in possession of any of the property.

Scope.—*This section authorises the Court to make an order* for temporary protection of the person of a minor and the power is not exercisable after the protection of the minor, 2 C. W. N. 521. So the Court can grant injunction restraining the marriage of the minor *Ibid* ; see also 7 Lah L. J. 30=86 Ind. Cas. 226 ; 8 C. 266. But an order sanctioning the marriage of the minor is not competent under this

section. 44 B. 690=57 Ind. Cas. 79. The Court can put the guardian in possession of the minor. 37 A. 515=29 Ind. Cas. 416; 13 P. R. 1897. The Court has power

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temporary custody and protection of minor's property is the custody of the Court and is not contrary to the provisions of s. 12 (3) (b). For the words "any person" in that section do not include the words "the Court" 10 P. R. 1898. *Interim* order restraining minor's marriage with unsuitable person is competent. 28 N. L. R. 332=A. I. R. 1933 Nag. 62. Any one residing outside India cannot be appointed guardian of minor's person, 132 Ind. Cas 320=54 M. 758=60 M L. J. 615=A. I. R. 1931 Mad. 478 Act is not exhaustive and can be supplemented by C. P. Code s. 141 or A. I. R. 1933 Nag. 62=28 N. L. R. 1332.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of, or in opposition to, the application.

Hearing of evidence before making of order.

Notes.—Where a District Judge in appointing a particular person as guardian ignored the procedure laid down in sections 11 and 13 and failed to consider whether the guardian was by character and capacity a fit person and whether the appointment is for the welfare of the minor his procedure is materially irregular. 1923 Nag. 36; 68 Ind. Cas. 291. Proceedings for the appointment of guardians are not summary and regard must be had to rules of evidence and procedure. The Court must hold an enquiry and take evidence. 83 Ind Cas. 320=A. I. R 1925 Nag. 233; 89 Ind Cas. 865, 26 P. L. R. 161, 87 Ind Cas 646=A I. R 1925 Lah. 565=26 P. L. R 255; 63 P. L. R 1917=41. Ind. Cas. 976; 38 C. 783=14 C. L J. 226=10 Ind. Cas 334; 109 P L R. 1912=15 Ind Cas. 195; 3 O W N 985, A. I. R.

person to be the guardian of the person

person having the custody of the minor

w unfitness of the person applying to be

ate for the hearing of the petition, is bad and ought to be set aside 20 Ind. Cas. 578 The procedure to be followed in dealing with cases under the Act does not seem to be definitely prescribed in the Act itself but the various allusions in the Act to the Code of Civil Procedure show the general, intention, and no doubt it was contemplated that the code would usually be in force where the Act is in force (U B R. 1892-1896) Vol II p 407 The parties cannot refer the matter to arbitration 47 M 459=84 Ind Cas 613.

Enquiry by Subordinate Judge—1 Bom. L. R. 185=23 B. 698, but now see 7 A. L. J. 328=6 Ind Cas 565; 443 A 587.

Procedure.—*The procedure is not intended to be summary.* A. I R. 1928 Lah 108

14. (1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

Simultaneous proceedings in different Courts.

Court, they

determine in

or declara-

a High Court. 26 C. 133. Where urt the Court within the jurisdic- petition. A. I. R. 1934 Lah. 208.

15. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

Appointment or declaration of several guardians.

(2) On the death of a father, being an European British subject, who has, by Will or other instrument to take effect on his death, appointed a guardian of his minor child the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

(3) On the death of a mother, being an European British subject, who during the incapacity of the father of her minor child, has, by Will or other instrument to take effect on her death, appointed a guardian of the child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child, jointly with the guardian appointed by the mother, as it thinks fit.

(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties the Court may, if it thinks fit, : or more of the properties.

hich prevents the Court from person of a minor. 48 Ind. Cas. 75.

Clause (4).—46 M. 873.

16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jusdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

Appointment or declaration of guardian for property beyond jurisdiction of the Court.

Notes.—This section contemplates that the Court before which proceedings

generally over the property of a minor. A. W. N. (1905) 122=2 A. L. J. 460. Where a person has been appointed under the Act as guardian of the property and minor, in which of the appointment is discharged and *Ibid*

17. (1) In appointing or declaring the guardian of a minor the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears, in the circumstances, to be for the welfare of the minor.

Matters to be considered by the Court in appointing guardian.

(2) In considering what

intelligent preference, the Court may consider that preference.

(4) As between parents who are European British subjects adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but other things being equal, if the minor is a male of tender years or a female, the

minor should be given to the mother, and if the minor is a male of an age to require education and preparation for labour and business, then to the father.

(5) The Court shall not appoint or declare any person to be a guardian against his will.

The Court shall be guided......consistently with the law to which the ... directed to have regard to the law to ... *Council.* The appointment or decla- ... with the law to which the minor is ... for guardianship, the welfare of the ... regard must be had to the recognised rights of guardianship under the law. 10 M. L. T. 477; see also 5 Ind. Cas 571; 6 Ind. Cas. 1001; 11 C L. J. 632; 13 O. C. 140; 9 Bom. L. R. L R. 923=32 B. 50; 85 Ind. Cas. 624=1925 Oudh. 623; 4 U. B. R. (1892-1896) Vol. II. 418

... consideration for the Court in an ap- ... the welfare of the minor consistently ... 1894. Where Court is satisfied that ... uld be appointed, an order of ... satisfied the order can not be ... minor, who is old enough to express an intelligent opinion could not be for the welfare of the minor. 231 P. L. R. 1911=11 Ind. Cas. 478=196 P. W. R. 1911. The guiding principle, in appointing a guardian is the consideration what is best for the welfare of the minor. 5 A. L. J. 101=A. W. N. 1908, 51=3 M. L T. 1203=30 A 137. The Court should weigh all the circumstances of each particular case and decide what would be for the welfare of the minor which ought to be the paramount co ... to be consider ... legal right to ... previous relat ... what order w ... guardians for ...

... n fact the main ... minors who have ... r of that friends ... e place of their lost parent or parents? The interest, well-being and happiness of the minors ought to be the main and paramount consideration for the Court in selecting the guardian of the person of a minor 32 B 50=9 Bom L. R. 923; see also 29 A. 10; *Queen v. Gyngull*, (1893) 2 Q. B D 233; 25 C 881; *In re MacGrath*, 1 Ch. 143; 57 Ind. Cas. 651; 85 Ind Cas 624=1925 Oudh 623; 29 A. 210; 30 A 137; 33 A. 222, 13 O. C. 140=6 Ind. Cas. 1001; 40 C. 241, 2 A. L. J. 81; 192 P. L. R. 1913=19 Ind Cas 609; 22 M L. J. 68=13 Ind Cas. 16=10 M L T. 477; 20 A. 210; 10 Ind. Cas. 283; 34 B. 121: 33 Ind. Cas 77=19 M L. T 294; 2 M, W. N. 561: 231 P. L. R 1911=11 Ind. Cas 478: A. I R 1923. (Lah.) 283; 105 P. L. R. 1903: 101 P. L. R 1915=28 Ind. Cas. 507: 18 C. W N. 1198. 12 N. L, R 35=32 Ind. Cas. 977, 84 P. L. R. 1915. 16 M. L. J. 357; 1925 Pat. 44; 26 Ind Cas. 300, A. I. R. 1934 All 849=1934 A. L. J. 652.

... earing 18 years. 16 ... . Cas. 985 A Maha- ... d guardian of her ... 51 Ind. Cas. 322= A I. R 1934 Lah 291

Sex—Section 27 of Act XL of 1858 laid down that a person other than a female should in no case be entrusted with the guardianship of a female minor. 10 C. 15; 6 W. R. Mis. 125 In a subsequent case under Act IX of 1881, it was held that the rule did not apply whether the father is the applicant. 14 C. 615; see also 13 A. 28. Under the present Act there is also no such absolute restriction.

Religion—The father of an infant is *prima facie* entitled to say in what religion his infant child should be brought up, but, at the time in a proper case (when the father has abdicated his right), there is undoubted jurisdiction in the Court to disregard those wishes. 25 C. 881=2 C. W. N. 379 ; 46 P. W. R. 1916; *In re Grey*, (1902) 1 Ir. Rep. K. B 684 ; 5 W. R. 235. But in a Punjab case it was held that the father's change of religion has no effect on his right of guardianship. 167 P. L. R. 1901=60 P. R. 1901 ; see also A. I. R. 1932 Lah. 385=33 P. L. R. 419=14 Lah. 176. So far as the appointment of other persons as guardians of minor is concerned, a person who is likely to bring up the minor in the religion of his father is to be

R 745 : 22 M. L J. 247=13 Ind. Cas. 453. But a father may lose his right to the guardianship of his children, when he has permitted another person to maintain and educate them and it would be detrimental to the interest of the children to alter the manner of their maintenance or the course of their education. 5 L. B. R. 133. Child should be brought up in father's religion except when minor's interest justifies direction to contray. A. I. R. 1933 Rang. 201=145 Ind. Cas. 843.

Other considerations for appointment.—In appointing a guardian not only nearness of kindred but also suitableness of the person is to be considered, 4 W. R. 22 ; 4 Ind. Cas. 1117 : 9 W. R. 334 ; 6 W. R. 548 ; 2 C. L. R. 583 : 2 C. W. N. 191 ; 13 A. 78. According to Hindu law a paternal grand-father is preferred to a stepmother. 7 W. R. C. R. 320. The fact that the applicant is a *purdanashin* lady is not a disqualification. 20 W. R. 432 : 10 Ind. Cas. 428 ; 18 C W. N 1108 : 15 C. W. N. 676 : 1922 Nag. 232 : but see 18 C. W. N. 160 : 69 Ind. Cas 569. In *Mithila* a mother is preferred to a father. 5 C. 93. Under the Mahomedan law a relative of

the Mahomedan law a
15 : 60 Ind. Cas. 888 :
107=32 P. W. R. 1917.
M L. J. 309. 48 Ind.
tom she does not lose
ian should be enquired
As regards preference
N 853 ; 36 A. 280 ; 11

Ind. Cas. 340 ; 18 A 373 ; 34 A 213 ; 29 C. 473 ; 20 B. 199 ; 26 M. 734 ; 14 C 615 ; 8 A. 322 ; 25 C L J. 551 ; 6 Ind. Cas 734 ; 11 C. 649 ; 11 C. L J. 632 ; 37 C. L. J. 329 ; 5 B. L. R 557 ; 9 C. 599 ; 20 W. R. 411 ; 11 W. R. 297 ; 6 W. R. Mis. 125, 35 C L. J. 192 ; 32 C. 444 ; 11 C. 649 ; 48 Ind Cas. 60. As regards the right of relatives according to the Hindu law, *vide*, 5 C. 43 ; 7 W. R. 320 ; 16 C. 584 ; 3 B. 1 ; 6 B. 593 ; 3 W. R. 194 ; 9 C. P. L. R. 12 ; 15 C. W. N. 558 ; 32 B. 50 ; 33 A. 222 ; 10 Ind Cas 283 ; 34 C L. J 529 ; 16 C 584 ; 19 Ind. Cas 428 ; 5 L. B. R. 133 ; 9 O. L. J.

A. I R. 1932 Lah. 493.

Clause (3)—*Vide* 47 Ind. Cas. 817 ; 1925 Nag. 233 ; 18 C. W. N. 1198 ; 38 M. 807 (P. C) ; 2 A. L. J. 81 ; 5 L. B. R. 478 ; 32 B. 50 ; 20 Ind. Cas 578 ; 75 Ind. Cas. 497.

Clause (5)—5 B. 310 ; 18 C W. N. 1198=25 Ind. Cas 112.

Appointment or declaration of Collector in virtue of office.

18. Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorize and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

Notes.—When a Collector is appointed, he must submit through the Commissioner a copy of the order appointing him a guardian and also a report and scheme for the proper management of the property. *Vide Bengal Court of Wards Rules and U. P. Court of Wards Rules.*

Guardian not to be appointed by the Court in certain cases.

19. Nothing in this chapter shall authorize the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint and declare a guardian of the person—

(*a*) of a minor who is a married female, and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or,

(*b*) subject to the provisions of this Act with respect to European British subjects, of a minor whose father is living, and is not, in the opinion of the Court, unfit to be guardian of the person of the minor,

(*c*) of a minor whose property is under the superintendence of a Court of Wards competant to appoint a guardian of the person of the minor,

Notes.—"The jurisdiction and authority of Courts of Wards are expressly saved and will not be in any way affected by the proposed law."—*Statement of Objects and Reasons.*

Clause (a)—In the case of a married female, the husband is the proper guardian of her person, if he is not unfit 23 W. R. Cr. 178; 17 C 228; A. I R. 1935 Lah. 25 The Court cannot appoint any other person as her guardian without finding that the husband is unfit. A.I.R. 1924 Lah. 570=79 Ind. Cas 451 This rule is applicable where the wife is legally married to her husband. 32 Ind Cas 897=46 P. W. R. 1916. Under the Mahammadan Law, the mother should be appointed guardian of her minor daughter who has not attained puberty in preference to her husband 5 B. L. R. 557; 11 C 649 Section 19 does not make a father the guardian of the person of a minor girl, when he is not already her natural guardian under the personal law applicable to the minor The Act is not intended to interfere with the personal law of minors. *Ganga Devi* v *Narshing Das*, A. I R. 1935 Lah. 25.

Clause (b)—Where a father is living, this section forbids the Court to appoint or declare a guardian, the father being deemed the natural guardian without appointment or declaration U. B R (1802-1896) Vol II. p 413. This section precludes the appointment of a guardian of the minor's person unless the father is found to be unfit to be guardian U B R (1892-1896) Vol II 412; see also 83 Ind. Cas 308=1925 Lah 250; 1925 Oudh 282; 12 O L. J 441=2 O W. N. 242=87 Ind. Cas. 1024=1925 Oudh 421; 86 Ind Cas 957=1925 Mad. 1085; 39 M. 473=28 M. L J. 442=29 Ind Cas 4, 27 P L R 330=95 Ind Cas 558=A. I. R. 1926 Lah. 396. As to whether this section is controlled by section 17, *vide* 47 Ind. Cas. 187=12 S. L R. 14; 71 Ind. Cas 443=19 N L. R. 45. The word "father" means father of a child born in wedlock 36 Ind. Cas 646=8 L. B. R. 415=9 Bur. L T. 205, but see U B. R (1892-96) Vol II, p 413 It includes adoptive father. 11 B. L. R, 171 … father no superior right to the guardiansh… certain circumstances it may be even desir… he boy's property. As regards his claim … here the summary powers of the Act are ir… ights of the father against the interest of … the guardianship of his children when he has permitted another person to maintain and educate them and it would be detrimental to the interest of the children to alter the manner of their maintenance or the course of their education. 5 L. B R 133, see also 23 C. 290; 12 A 213; U B R. (1892-96) Vol. II. 415. Ill-treatment of the first wife and second marriage of the father are not sufficient to deprive the father of the guardianship of his minor sons by his first wife. 1915 M W. N. 414=29 Ind. Cas 740; but see 29 A. 210. The father is not deprived of his right by mere change of religion 47 Ind. Cas. 817=12 S L R 14; 84 P. R. 1894, but see 25 C 888, 11 S. L. R 17=41 Ind. Cas. 571: see also 1 A 549; 46 Bom. 415=A I R. 1922 Bom. 278=64 Ind. Cas. 576. The Court can not declare a father or any other person when the father is living as the guardian of the minor, unless he is considered unfit. 24 Bom L. R. 779=A. I. R. 1922 (Bom) 405=68 Ind Cas. 518; 38 M. 806 P. C.; 83 Ind. Cas. 308; 1925 Oudh 282; 11 O. L. J. 537, 48 Ind. Cas. 60; 12 O. L. J. 441; 86 Ind. Cas. 957; 71 Ind.

Cas. 433; A. I R. 1923 Rang, 120; 46 A. 706. But according to Madras and Calcutta High Courts application by husband and father is competent. 44 C. L. J. 40; 86 Ind. Cas 646.

Clause (c)—*Vide* 24 Ind. Cas. 944; 25 Bom. L. R. 1232; 77 Ind. Cas. 702.

CHAPTER III.

Duties, Rights and liabilities of guardians.

General.

Fiduciary relation of guardian to ward.

20. (1) A guardian stands in a fiduciary relation to his ward and, save as provided by the Will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

(2) . . ds to and affects purchases . . : . .he ward of the property . . has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

Notes—"This section lays down certain general propositions based on the fact that guardianship is a trust, and that the relationship between guardian and ward is one *uberrima fidei*, not only while it lasts, but even after it has ceased to exist"—*Statement of Objects and Reasons.* See also 30 B 591; 54 Ind. Cas. 926=157 P R. 1919; 14 Ind. Cas. 674=33 P. L. R. 1912. 13 B. 61. An Official Trustee cannot be appointed guardian of the property of a minor. 1928 Bom. 69

Capacity of minors to act as guardians.

21. A minor is incompetent to act as guardian of any minor except his own wife or child, or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

is based on section 21
ies that a minor is (a)
t he is competent to be
d that (c) he is as such

member of a Hindu family,
section 21 is evidently intenc
property. It does seem anon
persons of his wife and childre
the
of th
meni
in m
own person I might venture t
21 by omitting the portion foll
minor guardian over his wife
is necessary to exercise his c
that he might have no power
and so that the guardianship
his own properties. *Per Sad*
608=30 M. L. J. 21. A child
N. 160; 5 Bom. 542; 3 B. 2. But it does not include niece. 11 Ind. Cas. 340=14 O. C. 103.

Remunaration of guardian.

22. A guardian appointed or declared by the Courts shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the Local Government, by general or special order, directs.

Notes.—This section gives discretion to the Judge in the matter of allowing allowance and as such no appeal lies against his order. 24 B 95=1 Bom. L. R. 547; see also 48 P. R. 1901; 78 Ind. Cas. 108=A. I. R. 1925 Oudh 260.

Control of Collector, as guardian

23. A Collector appointed or declared by the Court to be guardian of the person or property or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the Local Government, or of such authority as that Government, by notification in the official Gazette, appoints in this behalf.

Notes.—Where the Collector is authorised by the Board of Revenue, as Court of Wards, to raise a loan on mortgage of the ward's properties, he can delegate his powers to the manager acting under him. The maxim *"delegatus non potes delegare"* is to be understood with this necessary qualification that in any particular case, if no authority to delegate has been given such authority may be implied from circumstances of the case. 3 C. L. J. 165. A collector appointed by the Court as guardian of the property of a minor has got special powers under this section and section 29 which limits the power of a guardian does not apply to a Collector. 96 Ind. Cas. 17=28 Bom. L. R. 628.

Guardian of the Person.

Duties of guardian of the person.

24. A guardian of the person of a ward is charged with the custody of the ward, and must look to his support, health, and education, and such other matters as the law to which the ward is subject requires.

Custody.—A guardian is entitled to the custody and control of his ward *R.* v. *Johnson*, (1724) 8 Mod Rep. 214, *Flemming* v *Pratt.* (1835) 1 L J. 194; *R* v. *Isely* 5 Ad & El. 441; *Re Andrews*, (1873) L. R 8 B. 153

Education.—A power to apply income for the maintenance and support of an infant authorises its application for his education *Per Jessel M. R.* in *Re Breed's Will* (1875) 1 Ch D 226 at p 229 A guardian is entitled to control the education of his ward *Vide Tremains Case*, (1719) 1 Stra 168, *Hall* v. *Hall*, (1749) 3 Atk. 721; *Mitchel* v *Manchester*, (1751) 1 Dick 149 But he must be educated according to his position and expectation *Powel* v *Clever*, (1789) 2 Bro. C C. 409; *Colston* v. *Morris*, cited in *Lyons* v. *Blenkin*, (1821) Jac. 245 257 *n* (*a*). In matters of minor's education regard must be paid to the wishes of the parent, so far as they are known *Campbell* v. *Mackay*, (1837) 7 My & Cr 31 per *Lord Cottonhum L C* at pp. 34, 37. In the case of an adopted son, he should be shaped in such a manner as to make him suitable member in the family of his adoption. 5 P. L. T. 45=81 Ind Cas. 1015

Religious education—The father of an infant has the right to determine in
1; 22 M. L J. 247; *Re*
Re Agar Ellis, 10 Ch.
effectually deprive him-
either before or in con-
, *citing Re Smith*, 22
D' Alton, ubi supra, Re
e lost by his immoral
tendency. *Thomas* v.
Roberts, (1850) 3 Deg & Sm. 758 The right of the father continues even after his
rent religion. 22 M.
1 Y & C. Ch. Cas.
lsbury, p 112. The
abdicated his right
183; *Re Newton*
father's death the
ewbury (1866) 1 Ch.
App 253, 11 W. R. P. C. 77; 46 P. W. R. 1916=32 Ind. Cas. 539; 57 Ind. Cas.

651, ; *Haksworth* v. *Haksworth*, 6 Ch. App. 539. An exception can be made on the ground of welfare of the infant ; *Andrews* v. *Salt* (1873) 8 Ch. App. 622 ; *Re Clarke* (1882) 21 Ch. D. 817; *Re Mc Grath* Infants (1893) 1 Ch. 143 C. A.

And such other matters—It is doubtful whether these words include the marriage of the ward. 22 B. 509 ; 25 C. L. J. 551 = 38 Ind. Cas. 787. Where a person appointed guardian under the Guardians and Wards Act is also the guardian for marriage under the rules of Hindu law, the Court can give proper directions for marriage. 16 C. W. N. 447, 22 Ind. Cas. 831, 13 Ind Cas. 251. Where even the guardian for marriage is a different person there even he should apply to the District Judge for an order 42 C. 351 ; see also 40 Ind. Cas. 136 ; 20 P. L. R. 1914 ; 24 Bom. L. R. 845 ; 32 B. 50 ; 39 M. 473 ; 57 Ind. Cas 651 ; 40 Ind. Cas. 136, 50 Ind. Cas. 998 ; 34 Bom. L. R. 83 = 56 B. 71 = A. I. R. 1932 Bom. 156 = 137 Ind. Cas. 732 ; 1933 A L J. 1188 = A. I. R 1933 All. 480. Order of District Judge sanctioning marriage of minor ward not falling under s. 43 can be revised in a fit case. A. I. R. 1932 Bom. 156 = 56 B 71 = 34 Bom. L. R. 71 = 137 Ind. Cas. 732.

Title of guardian to custody of ward.

25. (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882.*

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

Notes.—A father according to the Hindu law is entitled to the custody of this minor children 46 A. 706 = 83 Ind Cas. 24 ; see also *R.* v. *Thorp* (1696) Cart. 384 ; 44 A. 587 = 1922 All. 338 ; 73 Ind. Cas 948 ; 84 P. R. 1894 ; 25 C. 881 ; A. I. R. 1935 All. 838 ; A I R 1935 Mad. 568 ; but see 1925 Oudh 257, 282 ; 83 Ind. Cas. 308. The restoration of custody can be obtained by a guardian where he has been deprived
. 3 Keb. 528 ; *Re Andrews* (1873)
It is objectionable to make a
A certificate of guardianship
1 infant. A. I. R. 1925 Oudh
incompetent. His only remedy
59. If a person is willing and
is no bar to his appointment
Father is primarily *entitled to*
lifference and neglect, because
363 ; A. I. R. 1935 Mad. 195.
A father cannot apply under the provision of this section for the custody of his infant son. *Ibid.*, but see A. I. R. Oudh 1925, 257 ; 87 Ind. Cas. 1024 = A. I. R. 1925 Oudh 421 ; 40 B. 600 ; 86 Ind. Cas. 957 = A. I. R. 1925 Mad. 1085 ;
be appointed guar-
iew of the provisions
appointed the guar-
ke proceedings under
Ind. Cas. 1024 ; see
also 48 M. L. J. 179 = 2 L W. 244 = 86 Ind. Cas. 640 ; 27 Bom. L. R. 779 The father has preferential right over mother. 44 A. 587 ; 73 Ind. Cas. 948. But for the welfare of the minor, the minor may be allowed to live with mother. 68 Ind. Cas. 518. So also for the welfare of the minor other relatives can be given custody of the minor in preference to father, 25 C. 881 ; 84 P. R. 1894 ; 81 Ind. Cas 1045 ; but see 7 M. 29. Except in cases in which the Guardians and Wards Act provides a remedy by application, a suit *inter partes* for the custody of a minor son is the only remedy of the father. 44 Ind. Cas. 753 = 10 Bur. L. T. 186. The custody referred to in this section includes both actual and constructive custody. The duty of inquiry under this section is cast upon the Court and cannot be delegated. 48 Ind. Cas. 60 = 21 O C. 894 = 5 O. L. J. 516. The word "custody" in s. 25 includes the actual as well as the constructive custody of the minor, and the section is not limited to the powers of enforcing the guardian's

* *Act X of 1882.*

right to the extreme cases of an actual leaving or removal. *Noshiram* v. *Sharosh baun*, A. I. R. 1934 Bom. 311=36 Bom. L. R. 668=151 Ind Cas. 1037. The father of an illigitimate son in whose care the minor lives is competent to apply. 15 Lah. 630=35 P. L. R. 677=A. I. R. 1934 Lah 1003; A. I. R 1934 Rang. 49=12 Rang. 161=149 Ind. Cas. 1045. Before exercise of discretion minor must have left or have been removed from actual or constructive cusdody of guardian. A. I. R. 1932 All. 215=1932 A. L. J. 21=54 A 128=137 Ind. Cas. 219 Regular suit does not lie in cases when s. 25 applies A I. R. 1932 Rang. 4=9 Rang 569=136 Ind Cas. 831. A husband is not entitled to the custody of minor wife if he ill-treats her. A. I. R. 1935 All. 840.

Removal of ward from jurisdiction.

26 (1) A guardian of the person appointed or declared by the Court, unless he is the Collector or is a guardian appointed by Will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

Notes—So long as the guardian appointed to the person of a minor by judge ... has no power to direct that the ... N, 1899, 204. It is objection- ... ho resides out of British India ... ne Act 137 P. R. 1893 When ... children, did not take proper ... his education was not looked after, and the father set up a claim in the minor's money and took another wife, *held* that, from the view of minor's welfare, he was not a fit and proper guardian and was liable to be removed 11 A L J. 209=19 Ind. Cas. 65.

Cases—A. W. N. (1899) 204; 8 M. H. C. R. 94; 19 Ind. Cas. 655.

Guardian of Property

Duties of guardian of property.

27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property.

... a guardian to make an arrangement

... on the part of the guardian within this sec ... for debt which could not be legally recovered owing to the lapse of time. 23 O C. 72. There is no prohibition against guardian to refer a dispute in which minor's property is involved to arbitration 53 A. 428=1931 A L J. 170=A. I R 1931 All. 307. This is applicable to *defacto* guardians as well. 12 Rang. 656=A I. R. 1034 Rang. 335.

Powers of testamentary guardian

28. Where a guardian has been appointed by Will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has, under this ... made the declaration permits ... restriction, to dispose of any ... anner permitted by the order.

... and duty of receiving the rents ... ersonal estate of the ward for the ... or during any shorter period for ... *p. 131*; see also *Bedell* v. *Constable*

(1668) Vaugh, 177 ; *Beaufort* v *Besty*, 1 P. Wms. 703 ; *Eyre* v. *Shaftbury*, 2 P. Wms 103 ; *R.* v. *Sherrington*, 3 B & Ad. 714. He is liable to account for profits and income of the estate received by him. *Mathews* v. *Brice*, (1851) 14 Beav. 341. A guardian under a Will, who also applied for and accepted the position of a guardian under the Act, may be called upon to furnish security under s. 34 of the Act. 99 P. R. 1908. A person appointed guardian by Court cannot avoid the duties imposed by the Act, by posing as natural guardian. 87 Ind. Cas. 238=A. I. R 1925 Oudh 633. The guardian has no power to fritter away the minor's property. 1928 Lah. 90.

Limitation of powers of guardian of property appointed or declared by the Court.

29. Where a person other than a Collector, or than a guardian appointed by Will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

(*a*) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or

(*b*) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

Notes—A certificated guardian's powers are regulated and defined by the Guardians and Wards Act, and the rule of law, that, there, being no mutuality in a contract to which the minor was a party, it could not be enforced by him, did not ... perty entered into by a certificated ... 11 A. L. J. 783=20 Ind. Cas ... is binding on the minor if previous permission is obtained from the Court. 19 Ind. Cas 624. This section forbids the guardian to mortgage or charge the immovale property of this ward without the previous permission of the District Judge. 6 A. L. J. 491=31 A. 378=2 Ind. Cas 356. In a suit by a minor, on attaining majority, to avoid a sale made by his certificated guardian, he must make restitution of any benefits which he may have received from such sale before he obtains relief 2 A. L. J. 460=A. W. N. 1905 122 ; ... permission for raising loans, the Court should ... This section, which empowers the Court to ... him to give permission to the guardian to ... y be necessary, on an application properly ... It confers no power whatever on the Judge ... own motion in any way. 7 Ind. Cas 46=12 C. L. J 322. A sale by a guardian of the property of his minor ward with the permission of the Court, transfers a good title to the vendee, unless the Court's permission was obtained by fraud. 25 Ind Cas. 810 Even if a Court has given sanction under s. 29 and section 31 (1), it is not beyond the power of that Court to intervene and stop the sale, if it finds something detrimental to the ward's interest is contemplated. 119 P. W. R. 1915=29 Ind. Cas. 804=109 P. R. 1915. This section does not apply to transfers of property made on behalf of minors by their guardian *ad litem*. 61 P. W. R. 1918=14 Ind. Cas. 554 A certificated guardian is not free from the limitations imposed by this section because he or she is a natural guardian. 47 Ind Cas 343=61 P. R. 1918=162 P. W. R. 1918. A suit for specific performance of a contract is maintainable where the guardian agrees to sell with the consent of the Court. 22 C. W. N 477=40 Ind. Cas. 490 Where the guardian mortgaged the minor's property without the sanction of the Court the property is not ... the money from the guard ... his ward's property exce ... or refusing sanction the C ... the terms ... ; see also 22 A. L. J. 851=82 Ind. ... minor is entered into not by the ... application *Bhagwan* v. *Ghulam*, ... uardian is in utter disregard of direc- ... t protected by sanction. A. I. R. 1935 All 41.

Appeal—No appeal lies against an order of a District Judge sanctioning a mortgage in favour of a particular person in preference to another person. Such an

order cannot be treated as an order refusing sanction to mortgage. 11 O. C. 29; see also 87 Ind. Cas. 251=A. I. R. 1923 All 14.

Voidability of transfers made in contravention of section 28 or section 29.

30. A disposal of immovable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

Notes.—Any hypothecation of a property by the guardian without the permission of the Court is voidable. 8 A. L. J 754=11 Ind. Cas 764. So also a permanent lease granted by a guardian without the permission of the Court. 28 A. 30=2 A. L. J. 507. A mortgage executed by a Hindu mother who was the certificated guardian of her minor son under this Act, of her son's estate, without previous permission of the Court is not void, and the minor's estate ought to be held liable to the extent to which the minor had in fact benefited by the transaction, before he is equitably entitled to be relieved of the mortgage. 25 A. 59=A. W. N. 1902. 192; see also 10 C. [illegible] A. 288=A. W. N 1901, 78; 3 A. L. J. [illegible] 30 of the Guardians and Wards Act, [illegible] without the permission of the Court [illegible] it had benefited the minor and was a perfectly honest transaction. 13 Ind. Cas. 594; see also 16 C W. N. 715=14 Ind. Cas. 315=16 C L. J. 537. An agreement to pay interest and to make that interest a charge on the property though not sanctioned by the Court, is under this section merely voidable at the instance of the minors 24 P R. 1916=54 Ind Cas. 196. A sale by the guardian without the permission of Court is voidable. 27 Bom L. R 483=87 Ind Cas 712=A I. R. 1925 Bom. 320 But such transfer must be avoided by a regular suit in a competent Court The District Judge has no power to cancel such transfer. *Koondan Lal* v *Bhagwati*, A I. R 1934 All. 1043, see also 58 C. 128=34 C. W N. 948=A. I R 1931 Cal 131

Cases—22 A L. J 403; 79 Ind. Cas. 556; 22 A L. J. 155, 1 O. W N. 775, A I. R. 1928 All. 77; 152 Ind Cas. 503

Practice with respect to permitting transfers under section 29.

31. (1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed [illegible] own hand, or when from any cause [illegible]r with his own hand, shall be taken [illegible]e dated and signed by him.

(3) The Court may in its discretion attach to the permission the following among other conditions, namely:—

(*a*) that a sale shall not be completed without the sanction of the Court,

(*b*) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, direct,

(*c*) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants, as the Court directs;

(*d*) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to the disbursed therefrom or to be invested by the Court on prescribed securities, or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission

to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record thes tatement of any person who appears in opposition to the application.

Sub section (1)—In all cases where sanction is given for the raising of loans on the security of the property of minors, it is the duty of the Judge granting sanction to specify in his order of sanction not only the amount to be raised and the property to be mortgaged, but also the rate of interest at which the loans are to be raised. If nothing is said as to the rate of interest the lenders are entitled only to a reasonable rate of interest, on the money advanced. 30A 188=5 A. L. J. 260 ; 11 C. 379 P. C. ; 21 C. W. N. 63 ; 34 Ind. Cas. 916=24 P. R. 1916. Where an unconditional
he sale of a property of the minor
risdiction to order re-sale of the
and registered 46 Ind. Cas. 542.
on, though relating to procedure
only are imperative and not merely directory. 12 O. C. 78=2 Ind Cas. 237. The object of this sub-section is manifestly to ensure that the Court has applied its mind
at an express finding with regard
103 Ind. Cas. 898. A suit to set
half during minority with the sanc-
guardian, can not be maintained
e's order was illegal or that the sale
was not in conformity with order, or that the proceedings were initiated by fraud on behalf of the purchaser. 49 Ind. Cas. 375 Sanction of Court given under this section will not cure inherent defects that may exist in a sale by a guardian. 45 M. 429=42 M. L. J. 333=65 Ind. Cas 964. The violation of the procedure prescribed in this section for recording the order granting the permission cannot be made the ground of brushing aside the finality of the order as enacted by s 48. 87 Ind. Cas. 238=A. I. R. 1925 Oudh 633 ; 38 C. L. J. 213 ; but see also 87 Ind. Cas. 69 ; 27 O. C 284.

Sub section (3).—*Vide* 26 C. W. N 218 ; 95 Ind Cas. 421.

Sub-section (3) (d).—No appeal lies from an order passed under this sub-section. 1 Bom. L. R. 1.

Sub-section (4).—The words "any person" in the last para of this sub-section are not restricted in their application to the relations and friends of the minor. It is the duty of a Court to hear any person interested in an application made on behalf of the minor, even though he is not the minor's friend or relative. 10 M. L. T. 259=2 M. W. N. 1911, 165=11 Ind. Cas. 946.

Variation of powers of guardian of property appointed or declared by the Court.

32. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

Notes—A District Judge has no jurisdiction to dispossess third persons from the property over which they may be rightly or wrongly in possession, but can at best give directions to guardian to take necessary steps to recover the property. 47A. 313=23 A L. J. 28=85 Ind. Cas. 1047=A. I. R. 1925 All. 277.

Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.

33. (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court hinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

Notes.—By sanction of Court only statutory presumption of faithful performance is raised. 141 Ind. Cas 492=34 Bom. L. R. 996=A. I. R. 1932 Bom. 460; See also A. I. R 1934 All. 1043.

Obligations on guardian of property, appointed or declared by the Court.

34. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall,—

(*a*) if so required by the Court, give a bond, as nearly as may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

(*b*) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immovable property belonging to the ward, of the money and other movable property which he has received on behalf of the ward up to the date of delivering the statement, and of the dates due on that date to or from the ward;

(*c*) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs;

(*d*) if so required by the Court, pay into the Court at such time as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs; and

(*e*) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

Scope—The object of this section is to give the Court, as representing the interest of the minor, certain summary powers for the protection of his property. As soon as the ward becomes *sui juris*, the necessity for the power conferred on the Court by the section ceases He can sue his guardian for an account and can ratify expenditure or dispense with accounts as he thinks fit. 5 C. W. N. 207. This Act does not prohibit the appointment of a person residing out of British India as a guardian. 65 P. R. 1896

Clause (a)—A guardian under a Will, who has also applied for and accepted the position of a guardian under the Act, may be called upon to furnish security under [illegible] given to the judge [illegible]ing, with or without [illegible]

clause, *vide* 38 M L. J 58; 44 B 852=22 Bom L R 633=58 Ind. Cas. 213. Ordinarily Court should demand security from person to be appointed guardian. 131 Ind Cas 296=12 L. L. J 307=A I. R 1931 Lah 212. Order fixing amount of liability of surety is not necessary before assigning bond in favour of District Court executed by guardian and surety. 135 Ind. Cas. 833=1932 A. L. J. 47=A. I. R. 1932 All. 177.

Clause (b).—When appointing a guardian for the estate of a minor the Court should direct the guardian to file an inventory or list of minor's property in Court and should allow a maximum sum for the maintenance, education and advancement of the minor, which sum should never be exceeded without the leave of the Court. 10 Ind. Cas. 243. Where guardian of a minor takes lease of minor's property

benami, claim for lease money can be based only on contract or quasi contract and cannot be enforced by summary procedure. 136 Ind Cas. 2=33 P. L. R. 437= A. I. R. 1932 Lah. 272

a guardian does not relieve him of respon-

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who had been discharged subject to his furnishing proper accounts. *Held*, that it was contrary to the intention of the Act that a detailed scrutiny of accounts should be held in order to ascertain what is really due by the guardian 100 Ind. Cas. 600.

Clause (d).—This section empowers the Court to direct the guardian to pay into Court the balance due from him on the accounts he has exhibited in Court, that is to say, the balance shown by such accounts, and not the balance which the Court finds to be due upon taking a separate account of the administration of the property. L. B R. (1893—1900) p 447. Where the amount the guardian was called upon to pay was not an amount of balance due from the guardian as the same had not been paid to her nor was it a balance due on accounts filed in compliance with a requisition under this clause, the order imposing a daily fine was *ultra vires*. 20 C. W. N. 663=33 Ind Cas 918. The guardian can be asked to pay into Court the amount shown in the account. 98 Ind. Cas. 332. The Court can compel the guardian to produce the cash. 94 Ind. Cas 79=A. I. R. 1926 Mad. 825; see also 34 P L R. 549=A. I R. 1933 Lah. 484.

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R. 1931 Oudh 403=8 O. W. N. 1146=135 Ind. Cas. 702.

* "**34A.** When accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (*c*) of section 34 or otherwise, the Court may appoint a person to audit the accounts, and may direct that remuneration for the work be paid out of the income of the property."

Power to award remuneration for auditing accounts.

Notes.—The Guardians and Wards Act, 1890, contains no specific provision for the auditing of the accounts of minor's estates and the meeting of the cost of the audit out of the estates. The audit of such accounts tends to be left to the Judges of subordinate Courts or District Court's ministerial officers, who have rarely the time or training to apply anything in the nature of a thorough test. With a view to checking the possibility of defalcation an adequate audit of these accounts is desirable, Accordingly

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scales of remuneration to be granted to the auditors—*Statement of Objects and Reasons.*

35. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper

Suit against guardian where administration bond was taken

* Inserted by Act 17 of 1929.

person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court and shall be entitled to recover thereon as trustee for the ward, in respect of any breach thereof.

Notes.—If a guardian of property wastes the property, he may be sued under this section or he may be removed from his appointment as guardian, and may then be made to account under section 41. L. B. R. (1823-1900) 447 The Court is the obligee under a bond executed by sureties under this section and the Court alone is entitl [illegible] form of law. 42 M. 302= [illegible] =49 Ind. Cas. 587. The [illegible] irs of a minor even when [illegible] 1. L. R. 633=58 Ind. Cas. [illegible] n of the amount due from the guardian. 1923 Lah. 506. Where an application is made by guardian for discharge, Court cannot inquire into correctness of accounts put in by guardian and ask guardian to pay amount due to minor. For this minor has to bring suit under s 35 and 36. 33 P. L. R. 441=A. I R 1932 Lah. 306.

No Assignment of Administration-bond-appeal.—No appeal lies from an order, passed by the District Judge, under this section declining to assign the bond. It is competent to the District Judge to assign the bond, which is executed in his name, to a third person. 7 Bom. L. R. 803=39 B. 164

Suit against guardian where administration bond was not taken.

36. (1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure as amended by this Act.*

Notes—A suit brought against the guardian of the property of a minor under the provision of section 36 of the Act is in order even if the leave of the Court is obtained subsequent to the filing of the plaint. 44 B. 602=22 Bom L. R. 787=57 Ind. Cas. 540 , see also A. I. R 1934 Lah 410

General liability of guardian as trustee.

37. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

Termination of Guardianship.

Right of survivorship among joint guardians.

38. On the death of one or two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

Removal of guardian

39. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by Will or other instrument, for any of the following causes, namely :—

(*a*) for abuse of his trust ;

(*b*) for continued failure to perform the duties of his trust ;

(*c*) for incapacity to perform the duties of his trust ;

(*d*) for ill-treatment, or neglect to take proper care of his ward ;

* Act XIV of 1882.

benami, claim for lease money can be based only on contract or quasi contract and cannot be enforced by summary procedure. 136 Ind. Cas. 2=33 P. L. R. 437= A I. R. 1932 Lah. 272.

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Clause (d).—This section empowers the Court to direct the guardian to pay into Court the balance due from him on the accounts he has exhibited in Court, that is to say, the balance shown by such accounts, and not the balance which the Court finds to be due upon taking a separate account of the administration of the property. L. B R. (1893—1900) p 447. Where the amount the guardian was called upon to pay was not an amount of balance due from the guardian as the same had not been paid to her nor was it a balance due on accounts filed in compliance with a requisition under this clause, the order imposing a daily fine was *ultra vires*. 20 C. W. N. 663=33 Ind Cas. 918. The guardian can be asked to pay into Court the amount shown in the account. 98 Ind. Cas 332. The Court can compel the guardian to produce the cash. 94 Ind. Cas. 79=A. I. R. 1926 Mad. 825; see also 34 P L R. 549=A. I R. 1933 Lah. 484.

the direction of the Court und uardianship under section 39 (e) imposition of a fine, and s. 45 of W. R. 1912=1 pplication for the point of view of benefit to the minor, and any relative that might be entitled to be heard on the appplication will be heard. 24 Bom. L. R. 145. Guardian cannot borrow money for purposes of marriage of ward without permission of Court. A. I. R. 1931 Oudh 403=8 O. W. N. 1146=135 Ind Cas. 702.

Power to award remuneration for auditing accounts.

* "34A. When accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (*c*) of section 34 or otherwise, the Court may appoint a person to audit the accounts, and may direct that remuneration for the work be paid out of the income of the property."

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Suit against guardian where administration bond was taken.

35. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper

* Inserted by Act 17 of 1929.

person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court and shall be entitled to recover thereon as trustee for the ward, in respect of any breach thereof.

Notes.—If a guardian of property wastes the property, he may be sued under this section or he may be removed from his appointment as guardian, and may then be made to account under section 41. L. B. R. (1893-1900) 447 The Court is the obligee under a bond executed by sureties under this section and the Court alone is entitled to sue on the bond in the absence of assignment in due form of law. 42 M. M. W. N. 468=49 Ind. Cas. 587.
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Suit against guardian where administration bond was not taken.

36. (1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an acco respect of the property of the ward, for the ward, such amount as may his representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure as amended by this Act.*

Notes—A suit brought against the guardian of the property of a minor under the provision of section 36 of the Act is in order even if the leave of the Court is obtained subsequent to the filing of the plaint. 44 B. 602=22 Bom. L. R 787=57 Ind. Cas. 540, see also A I R. 1934 Lah 410.

General liability of guardian as trustee.

37. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

Termination of Guardianship.

Right of survivorship among joint guardians.

38. On the death of one or two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

Removal of guardian

39. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by Will or other instrument, for any of the following causes, namely :—

(a)
(b)
(c)
(d)

* Act XIV of 1882.

(e) for contumacious disregard of any provision of this Act or of any order of the Court ;

(h) for ceasing to reside within the local limits of the jurisdiction of the Court ;

(i) in the case of a guardian of the property, for bankruptcy or insolvency ;

(j) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject :

Provided that a guardian appointed by Will or other instrument, whether he has been declared under this Act or not, shall not be removed—

(a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or

(b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

Scope.—A Court may remove a guardian declared by itself as guardian. 11 Bom. L. R 348 Court's duty is to direct its attention toward's minor's estate and make provision for protection of minor's property. 34 C. W. N. 986=A I. R. 1931 Cal. 102. Even where Court removes a guardian of person and property of a minor, still age of majority for that minor is 21 years. A. I. R. 1933 Lah. 600.

Testamentary guardian—The Court has no power under the Act to remove a testamentary guardian except for reasons stated in this section. 4 Bom. L R. 799 ; see also 39 P. R. 1893.

Instrument—The word 'instrument' as used in this section should be confined to instrument *ejusdem generis* with a Will 18 B. 375 ; see also 42 Ind. Cas 505.

not to guardians who have not been so appointed. 21 Ind. Cas. 848.

Cases.—2 O. W. N. 736 (F. 1
375 ; 85 Ind. Cas. 624 ; 71 Ind.
Ind. Cas. 680 ; 103 Ind. Cas. 470 .

Clause 39 (h)—A guardian residing outside the jurisdiction of the Court may be removed under this clause. 19 Ind Cas 65=11 A. L. J. 209 ; 36 A. 280 ; *contra*, A I. R. 1925 Nag 224. But where a person who at the time was residing outside the jurisdiction of the Court is appointed the guardian of a minor he cannot be removed from such guardianship subsequently on the ground that he does not live within the jurisdiction of the Court. 174 P. L. R. 1912=15 Ind. Cas. 554 ; A. I. R. 1924 Nag. 224 ; 1924 Lah. 313.

Re-Marriage.—In the absence of any clause in a Will appointing a widow as a guardian of the property of a minor that her guardianship of property shall cease on her re-marriage, she does not become legally disqualified by re-marriage. 32 P. W. R. 1913=18 Ind. Cas. 183 ; see also 38 C. 862.

Old age.—Old age by itself raises no presumption of disability to manage. 4 Bom. L. R. 799.

Appeal—There is no appeal against an order refusing to remove a guardian even if the applicant prays for the appointment of himself as guardian instead. 1 C. W. N. 693 : see also 23 C. 201 ; 19 C. 487 ; 14 Ind. Cas. 56 ; 56 Ind. Cas. 208=18 A. L. J. 624 ; 42 A. 514 ; 20 A. 433 ; 46 M. 873 ; 3 A. L. J. 44 (Notes).

Discharge of guardian.

40. (1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and if the guardian making the application is the Collector and the Local Government approves of his applying to be discharged, the Court shall in any case discharge him.

Notes.—Where an application for the removal of a duly appointed guardian of minor has been dismissed and the order of dismissal has been duly confirmed on appeal, a fresh application on the same allegations as before, for removal of the guardian of the minor is not sustainable. 20 A. L. J. 959.

Cessation of authority of guardian.

41. (1) The powers of a guardian of the person cease—

(a) by his death, removal or discharge ;

(b) by the Court of Wards assuming superintendence of the person of the ward ,

(c) by the ward ceasing to be a minor ;

(d) in the case of a female ward, by her marriage to a husband who is not unfit to be a guardian of her person or, if the guardian was appointed or declared by the Court by her marriage to a husband who is not, in the opinion of the Court, so unfit , or

(e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court

(2) The powers of a guardian of the property cease—

(a) by his death, removal or discharge ;

(b) by the Court of Wards assuming superintendence of the property of the ward ; or

(c) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative, to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

Sub-section (1).—A ward cannot sue the son of his late guardian for a rendition of accounts 22 A 332=A W N. 1900, 98 A declaration made by the Court under this section discharging a guardian from liability, has the effect of protecting the guardian from all suits in connection with the management of the minor's property, except the case of fraud discovered after declaration 11 Bom. L. R. 512=33 B 419=3 Ind Cas. 172 Section 9 is not confined to the case of a guardian appointed by Court The word "guardian" refers not merely to a guardian appointed or declared by the Court but also to the other guardians A I R. 1934 Oudh 392=35 Cr. L J 1108=11 O W. N 803=150 Ind Cas -06. In an application by the guardian for a discharge on the ground of majority it is not necessary for the Court to declare the minor to have attained majority *Nanna Khatum* v. *Basant Singh*, A I R 1934 All 406=1934 A. L J 318=149 Ind Cas 781

Sub-section (3).—A ward's suit against the widow and minor sons of his late guardian for rendition of accounts is not maintainable. 22 A. 332 ; 9 Ind Cas. 591 When a guardian is removed he must return the property of the minor. 14 Ind Cas.

to anything which he could establish by suit, be compelled to give up possession on

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powers under this clause. (1918) M. W. N. 440 ; see also 42 A. 1=52 Ind. Cas. 167. As regards maintainability of suits by ward against guardian's representative, *vide* 85 P. R. 1918=46 Ind. Cas. 457. The Court has power under s. 41 (3) of the Act to require a *de facto* guardian to deliver the infant's properties to the guardian appointed under this Act. 36 M. L. J. 189=51 Ind. Cas. 236. The Court can require the guardian to deliver any accounts in his possession or control relating to any past or present property of the ward. 5 C. W. N. 207 ; 29 C. L. J. 44=49 Ind. Cas 132. *Until the powers of the guardian of the property cease under section 41 (2) he cannot* be called upon to deliver the property in his possession on behalf of the ward. 18. N. L. R. 184 ; A. I. R. 1925 Sind. 269. Order for payment by guardian to his ward

Cases.—See 28 L. W. 642 ; 92 Ind. Cas. 98 ; 96 Ind. Cas. 173, 97 Ind. Cas. 578 ; 92 Ind Cas. 196 ; 50 M. 80.

W. N. 207. for accounts, when the P. L. R. 1917 =25 P. R. 6 Pat. L. J. 273 ; 3 Lah. L. J. 364.

Appointment of successor to guardian dead, discharged or removed

42. When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by Will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

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20 C. L. J. 298.

CHAPTER IV.

Supplemental Provisions.

Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.

43. (1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply

to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to [illegible] (2), to the guardian who has [illegible]

(4) In case of [illegible] (1) or sub-section, (2) the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure,* in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.

Clause (1).—Under this Act the Court acts in the interest of the minor, and will not suffer the minor's interest to be prejudiced. it is open to the Court to issue an order of injunction even without an application. 13 M. L. J. 211=18 Ind. Cas. 922=24 M L J 231. For cases under this sub-section, *vide* 15 C. L. J. 147 ; 47 M. L J. 655=82 Ind. Cas. 488, 24 M. L. J. 231=18 Ind. Cas. 922, 44 B. 690=57 Ind. Cas 79, 23 Ind Cas 351=20 P. L R. 1914, U. B. R. (1897-1901) Vol. II, 435 ; 5 Ind. Cas. 862 ; 13 Ind. Cas. 251 ; 82 Ind. Cas. 488. This section applies to all cases of disobedience whether or not the effect of dis-obedience is capable of removal or reparation. 15 C. L J. 147=14 Ind. Cas. 380 Where although an application is not maintainable the Court purports to decide the question under s 43 (1) treating it as one under that section, the party against whom the order is passed would be entitled to appeal, and also raise the question of the competency of the petitioner to apply under that section *Guanambal* v. *Vadivelu*, A I. R 1934 Mad. 207=66 M. L J. 351=39 L. W. 349=1934 M. W. N. 19=148 Ind. Cas 583=57 M 712. The application under s. 43 (1) has to be made by any person interested, *i e.*, a person interested in the minor. A stranger (a debtor desirous to have a loan) having no concern with the minor either as a relation or as one occupying a fiduciary position has no locus standi to file an application under that section. *Ibid.*

Sub section (4)—*Vide* 23 M. 517=10 M L. J 305, 14 Ind Cas 380=15 C L. J. 147 ; 24 M. L. J 231=18 Ind. Cas. 922, 23 Ind. Cas. 351=20 P. L R 1214 ; 103 Ind Cas 493.

44. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

Penalty for removal of ward from jurisdiction.

45. (1) In the following cases, namely :—

Penalty for contumacy.

(*a*) If a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub section (1), or

(*b*) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (*b*) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (*c*) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (*d*) of that section, or

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* Act XIV of 1882.

(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3),

the person, guardian, or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to

, or to compel his return, or to

or to pay the balance, or to

...ay be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and recommitted to the civil jail.

Notes.—The fact that one of the minors under the guardianship has ceased to be a minor does not preclude the District Judge from taking action under section 45 of the Act, and requiring the guardian to deliver up any property of the ward that might be in his possession or under his control. 16 M. L. J. 286. The remedies for contumacy and recusancy provided by this section are altogether inappropriate where a *bonafide* question, *e. g.*, the guardian's liability for defalcations made by a *gomasta* appointed by him with the Court's sanction to manage the ward's property arises. 11 Bom L R. 190=1 Ind. Cas 338 Notice under S 45 can be issued only after a requisition under s. 41. A. I. R. 1935 Lah 931.

Clause (a)—*Vide* 15 C. L J 147 : 49 Ind-Cas. 624 : 17 A. L. J. 377=51 Ind. Cas 88 : 29 C. L J 44 : 42 Ind. Cas. 625 ; 23 A. L. J. 736=88 Ind. Cas. 444 : 4 Pat. 264.

Clause (b)—Where a guardian omitted to obey the direction of the Court under s. 34 (e) of the Guardians and Wards Act, he could be removed from the guardianship under s 39 (e) of the Act. But such omission is not punishable with the imposition of a fine, and this section does not make such omission punishable. 34 P. R. 1912=90 P. W R. 1912=137 P. L. R. 1912.

Clause (c)—93 Ind Cas. 628=7 Pat L. J. 473

Reports by Collectors and subordinate Courts.

46. (1) The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act. and treat the report as evidence.

(2) For the purpose of preparing the report the Collector or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure.*

to a letter of the District Judge asking whether ... ment of the property does not send a "report." *Ibid.*

Upon any Court Subordinate to it—*Vide* 30 A 137 . 23 B. 698 : 18 C. W. N. 37 ; 26 B. 716=4 Bom L. R 511 ; 7 A. L. J. 328=6 Ind. Cas. 565.

Report of Collector.—It is only when the District Court calls upon the Collector for a report under this section that it is incumbent upon the Court to treat it as evidence. 25 Bom. L. R 1232.

Orders appealable.

47. An appeal shall lie to the High Court from an order made by a † Court,—

* Act XIV of 1882.

† The word 'District' after this has been omitted by Act IV of 1926.

(*a*) under section 7 appointing or declaring or refusing to appoint or declare, a guardian ; or,

(*b*) under section 9, sub section (3), returning an application ; or,

(*c*) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian ; or,

(*d*) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto ; or

(*e*) under section 28, or section 29, refusing permission to a guardian to do an act referred to in the section ; or,

(*f*) under section 32, defining, restricting or extending the powers of a guardian ; or

(*g*)

(*h*)

(*i*) [illegible] of a guardian, or settling a matter in difference between joint guardians or enforcing the order ; or,

(*j*) under section 44 or section 45 imposing a penalty.

Notes—This section provides for an appeal in certain cases. There is no appeal against an order of a District Judge refusing to remove a guardian, for it does not fall within any of the cases mentioned in this section. 19 C. 487. The only appeals which are allowed by the Act are specifically enumerated in this section. 28 M. L J. 96=27 Ind Cas 921 ; 31 B. 590 An appeal lies to the Governor in Council from the Political Agent's Court. 28 M. 227

Clause (a)—143 P R. 1906=12 P W. R 1507=105 P. L. R. 1907, 27 Ind Cas 121=18 O. C 66 ; 24 Ind Cas. 202, 56 Ind Cas. 513 ; 17 C. W. N. 820 ; 26 P. L. R. 576 1 L W. 37 ; 38 C W N. 1083 ; A I R 1935 Cal 223.

Clause (b) —107 P. R. 1919=53 Ind. Cas. 568 ; 33 Ind. Cas 563

Clause (c)—*Vide* 13 P. R. 1897 ; 29 Ind. Cas 416.

Clause (g) —The effect of this clause and section 48 is to allow no appeal from an order refusing to remove a guardian. 20 B. 667 ; 20 A 433 ; 14 Ind. Cas. 56=195 P. W R. 1912 But where the order is an order of removal an appeal lies. 22 C. L J. 79=30 Ind Cas 825 ; 78 Ind Cas 138 ; see also 26 Ind Cas 275=19 C. W. N. 84 No appeal lies where Court grants remuneration to guardian 78 Ind Cas. 138.

Clause (i) and (j)—*Vide* 1 O. C. 43 23 M. 517 ; A I R 1934 Mad. 207=66 M. L J 351 ; A. I R 1935 Lah 931

No appeal—A compromise by the guardian without sanction granted by Court after a judicial determination that it was for the minor's benefit can be set aside only by way of an application for review or by a regular suit and not by way of appeal 30 C 613=7 C W. N 419 No appeal lies against an order of the District Judge declining to compel a person in possession of a minor's property to hand it over to guardian and referring the guardian to a separate suit 40 P. L. R 1912=13 Ind Cas 326=15 P W R 1912 There is no right of appeal from an order passed on a guardianship application fixing the amount to be applied for the maintenance, education and advancement of the ward and of the person dependent upon him 28. M. L J 95=27 Ind Cas. 921 No appeal lies against an order calling upon a guardian to pay into Court the balance due from him on settlement of his accounts [illegible] is final and is not open [illegible] order under section 34 [illegible] tain sum of money as [illegible] not open to appeal. [illegible] Where an order of a [illegible] the order becomes final [illegible] ise 85 Ind. Cas. 667. [illegible] acting on the erroneous [illegible] sh fresh accounts and to pay the amount due after deleting objectionable items, the order of the District Court is not appealable. 22 P. L J 585 No appeal lies from order of Court calling on guardians to deposit amount as rent. A. I. R. 1933 Lah. 484=34 P. L. R.

(*c*) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub section (3),

the person, guardian, or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and recommitted to the civil jail.

Notes—The fact that one of the minors under the guardianship has ceased to be a minor does not preclude the District Judge from taking action under section 45 of the Act, and requiring the guardian to deliver up any property of the ward that might be in his possession or under his control. 16 M L. J. 286 The remedies for contumacy and recusancy provided by this section are altogether inappropriate where a *bonafide* question, *e. g.*, the guardian's liability for defalcations made by a *gomasta* appointed by him with the Court's sanction to manage the ward's property arises. 11 Bom L. R. 190=1 Ind. Cas 338. Notice under S. 45 can be issued only after a requisition under s. 41. A. I. R. 1935 Lah. 931.

Clause (a)—*Vide* 15 C. L. J 147 : 49 Ind-Cas. 624 : 17 A. L. J 377=51 Ind. Cas. 88 : 29 C. L J. 44 : 42 Ind. Cas. 625 ; 23 A. L. J. 736=88 Ind. Cas. 444 : 4 Pat 264.

s. 3 [illegible]
ship [illegible]
pos[illegible]
R. 1912=90 P. W. R. 1912=137 P. L. R. 1912.

Clause (c)—93 Ind. Cas. 628=7 Pat. L. J. 473

Reports by Collectors and subordinate Courts.

46. (1) The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence

(2) For the purpose of preparing the report the Collector or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure.*

[illegible]

to a letter of the District Judge asking whether [illegible] ment of the property does not send a "report." *Ibid*

Upon any Court Subordinate to it—*Vide* 30 A. 137 . 23 B. 698 : 18 C. W. N. 37 , 26 B 716=4 Bom. L. R. 511 ; 7 A. L. J. 328=6 Ind. Cas. 565.

Report of Collector.—It is only when the District Court calls upon the Collector for a report under this section that it is incumbent upon the Court to treat it as evidence. 25 Bom. L. R. 1232.

Orders appealable.

47. An appeal shall lie to the High Court from an order made by a † Court,—

* Act XIV of 1882
† The word 'District' after this has been omitted by Act IV of 1926.

(*a*) under section 7 appointing or declaring or refusing to appoint or declare, a guardian ; or,

(*b*) under section 9, sub section (3), returning an application ; or,

(*c*) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian ; or,

(*d*) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto ; or

(*e*) under section 28, or section 29, refusing permission to a guardian to do an act referred to in the section ; or,

(*f*) under section 32, defining, restricting or extending the powers of a guardian ; or

(*g*)

(*h*)

(*i*) [illegible] of a guardian or settling a matter in difference between joint guardians or enforcing the order ; or,

(*j*) under section 44 or section 45 imposing a penalty.

Notes—This section provides fo[illegible] appeal against an order of a Distri[illegible] *does not fall within any of the cases* [illegible] only appeals which are allowed by the [illegible] 28 M L J. 96=27 Ind. Cas 921 ; 31 B. 590 An appeal lies to the Governor Council *from the Political Agent's Court.* 28 M. 227. [illegible]

Clause (a)—143 P R. 1906=12 P W. R 1507=105 P. L. R. 1907 ; [illegible] Cas 121=18 O C. 66 ; 24 Ind Cas 202 , 56 Ind Cas. 513 ; 17 C. W. N [illegible] 26 P. L. R. 576 1 L W. 37 ; 38 C W. N 1083 ; A. I R. 1935 Cal. 223.

Clause (b) —107 P R. 1919=53 Ind. Cas. 568 ; 33 Ind Cas 563.

Clause (c)—*Vide* 13 P. R. 1897 ; 29 Ind Cas. 416.

Clause (g) —The effect of this clause and section 48 is to allow no appeal [illegible] an order refusing to [illegible] P. W. R. 1912 But [illegible] 79=30 Ind Cas 82 [illegible] 84 No appeal lies wh[illegible]

Clause (i) and (j)—*Vide* 1 O. C. 43 23 M. 517 ; A I R 1934 Mad. [illegible] M. L J 351 ; A. I R. 1935 Lah 931

No appeal—*A compromise by the guardian without sanction granted by the* [illegible] after a judicial determination that it was for the minor's benefit can be set aside by way of an application for review or by a regular suit and not by way of appeal [illegible] C 613=7 C W. N 419 No appeal lies against an order of the District [illegible] declining to compel a person in possession of a minor's property to hand it [illegible] guardian and referring the guardian to a separate suit 40 P L. R. 1912=[illegible] Cas 326=15 P W. R 1912 There is no right of appeal from an order pass[illegible] a guardianship application fixing the amount to be applied for the mainten[illegible] education and advancement of the ward and of the person dependent upon [illegible] M L J 95=27 Ind Cas 921 No appeal lies against an order calling [illegible] guardian to pay into Court the balance due from him on settlement of his ac[illegible] [illegible] is final and is [illegible] order under sec[illegible] rtain sum of [illegible] not open to [illegible] Where an ord[illegible] , the order bec[illegible] wise. 85 Ind. C[illegible] acting on the [illegible] nish fresh acco[illegible] the or[illegible] ies fro[illegible] 933

[illegible] aled. [illegible] of sec- [illegible] aled. [illegible] f Sche- [illegible] lled by [illegible] been re-

48. Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure,* an order made under this Act shall be final and shall not be liable to be contested by suit or otherwise.

Finality of other orders.

Notes.—It is doubtful what
to an order under this section.
365. Where an application for
for non-appearance and an appl
second substantive application fc
Where the District Judge refuse
that appeal lies to the High Court against the order. 17 C W. N. 472=18 Ind. Cas. 985 No appeal lies against an order of the District Judge declining to compel a person in possession of a minor's property to hand it over to the guardian and referring the gu
P. W. R. 1912.
the subordinate
tion. 20 C. L. J
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The expression '
under s 41 (3) and a separate suit will lie to contest the propriety of the requisition under s. 41 (3). 36 M. L. J. 189=51 Ind. Cas. 236.

Cases—36 M. L. J. 189; 49 Ind. Cas. 875; 55 Ind. Cas. 587; 42 A. 514=18 A. L J. 624=56 Ind. Cas. 208; 4 Lah. L. J 274=1922 Lah. 395; 27 O. C. 284=A. I. R. 1925 Oudh 237; 85 Ind. Cas. 667; 46 Mad. 873; 1924 Nag. 269; 1925 Nag. 141; 1924 Mad. 327; 1 O. W. N. 775; 92 Ind. Cas. 482.

49. The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had.

Costs.

50. (1) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may, from time to time, make rules consistent with this Act—

Power of High Court to make rules.

(*d*) as to the circumstances in which such requisitions as are mentioned in clauses (*a*), (*b*), (*c*) and (*d*) of section 34 should be made;

(*e*) as to the preservation of statements and accounts delivered and exhibited by guardians;

(*f*) as to the inspection of those statements and accounts by persons interested;

† "(*ff*) as to the audit of accounts under section 34A, the class of persons who should be appointed to audit accounts, and the scales of remuneration to be granted to them;"

(*g*) as to the custody of money and securities for money, belonging to wards;

* Act XIV of 1882.
† Inserted by Act 17 of 1929.

(*h*) as to the securities on which money belonging to wards may be invested ;

(*i*) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court ; and,

(*j*) generally, for the guidance of the Courts in carrying out the purposes of this Act.

(2) *Rules under clauses (a) and (i) of sub-section (1) shall not have effect* until they have been approved by the Local Government, nor shall any rule under this section have effect until it had been published in the official Gazette.

Applicability of Act to guardians already appointed by Court.

51. A guardian appointed by or holding a certificate of administration from a Civil Court, under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it as if he had been appointed or declared by the Court under Chapter II.

Notes—*The word "guardian" in this section when read with definition thereof* is s 4(2) can only mean a guardian who was such at the time when the Act came into force. 17 B 268.

Amendment of Indian Majority Act.

52. In section 3 of the Indian Majority Act, 1875, for the words, "every minor of whose person or property a guardian has been or shall be *appointed by any Court of* Justice, and every minor under the jurisdiction of any Court of Wards," the following shall be substituted, namely :—

"every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age."

Notes—The order of a of minor is a declaration of age of majority in such a cas[illegible] Act as amended by this section 9 M. L J 24 ; see also 6 Ind. Cas. 6 ; 29 A 672=4 A L J. 507=A. W N. 1907, 213

53. [*Repealed by Act 5 of 1908.*]

THE SCHEDULE*.

ENACTMENTS REPEALED

(*See section 2*)

Number and year.	Title or subject	Extent of repeal.
	Acts of the Governor-General in Council	
XIV of 1858 ...	Minors (Madras) ...	The whole.
XL of 1858 ...	Minors (Bengal) ...	So much as has not been repealed
IX of 1861 ...	Minors	The whole
XX of 1864 ...	Minors (Bombay) ..	The whole
XIV of 1869 ...	Bombay Civil Courts Act, 1869	So much the last paragraph of section 16 as has not been repealed
VII of 1870 ...	Court-fees Act, 1870	Section 19 H and article 10 of Schedule 1.

* So much of the Schedule as related to Act XI of 1889 has been repealed by Act VI of 1900, s 48 ; and the portion relating to Act XVII of 1855 has been repealed by Act XXIV of 1899.

Number and year.	Title or subject	Extent of repeal.
IV of 1872 ...	Punjab Laws Act, 1872.	So far as it relates to Act XL of 1858
* [	* *	*
XIII of 1874 ...	European British Minor's Act, 1874.	The whole.
XV of 1874 ...	Laws Local Extent Act 1874.	So far as it relates to any enactment repealed by this Act.
XX of 1875 ...	Central Provinces Laws Act, 1875.	So far as it relates to Act XL of 1858
XVIII of 1876 ...	Oudh Laws Act, 1876	So far as it relates to Act XL of 1858.
XIII of 1879 ...	Oudh Civil Courts Act 1879.	Clause (1) of section 25, relating to proceedings under Acts XL of 1858, and IX of 1861.
† [	* *	*]

THE HINDU DISPOSITION OF PROPERTY ACT, 1916.

ACT No. XV OF 1916.

Received the Governor-General's Assent on the 28th September, 1916.

An Act to remove certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition.

Whereas it is expedient to remove certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called the Hindu Disposition of Property Act, 1916.

(2) It extends in the first instance to the whole of British India, except

a gift in favour of

also a bequest in f

death The sole object of the Bill is to enable Court to carry out the settlor's or testator's intention which under the present state of the law they are precluded from doing —*Statement of Objects and Reasons*; 9 B. L. R. 377; 28 M. 363; 8 C. 637; 38 C. 188; 41 C 1007 P. C. 32 C. 992; 38 C. 468; 33 C. 180; 16 C. 383 (P. C); 6 A. 560; 29 C. 160; 6 B. 35; 35 B. 326; 21 B. 760, (P. C.)

Extent—This Act is not extended to Madras in as much as Mad. Act I of 1914 was in force there.

Dispositions for the benefit of persons not in existence.

2. Subject to the limitations and provisions specified in this Act no disposition of property by a Hindu whether by transfer *inter vivos* or by Will, shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such disposition.

Notes—The provisions of Mad Act I of 1914 and those of this Act are identical. ... Hindu Law as to succession and ... *ltra vires*. 30 M. L. J. 334=44 M. ... has repealed the provisions of that

* Repealed by U. P. Act III of 1901.   † Repealed by Act V. of 1903.

Act. 52 I. A. 310=48 M. 906 So now a gift to a daughter's s son not born at the testator's death but born during the life-time of the life-estate holder is valid. 40 M. 520=35 Ind. Cas 158; 53 Ind. Cas. 202; 76 Ind. Cas 223; 27 Ind Cas. 798.

Limitations and conditions.

3. The limitations and provisions referred to in section 2 shall be the following, namely :—

(*a*) in respect of dispositions by transfer *inter vivos*, those contained in "Chapter II"* of the Transfer of Property Act, 1882, † and

(*b*) in respect of dispositions by Will, those contained in "sections 1, 3, 114, 115 and 116 of the Indian Succession Act, 1925".

Notes—In view of this section the rule laid down by *Lord Haldane* in 28 C. W. N. 737 is not good law. No inference should be drawn from the absence of reference to s 15 of T. P. [illegible] previously invalic [illegible] when *inter vivo* [illegible] infringing those [illegible] although it is [illegible] there is some [illegible] 1931 Cal. 651, [illegible] applies to Hindus. 134 Ind. Cas 436=58 C. 768=A. I. R. 1931 Cal 651

Failure of prior disposition.

[**4.** Where a disposition of property fails by reason of any of the limitations referred to in section 3, any disposition intended to take effect after or upon failure of such prior disposition also fails]—*OMITTED BY ACT XXI OF 1929 S. 12*

Application of this Act to the Khoja community.

5. Where the Governor-General in Council is of opinion that the Khoja community in British India or any part thereof desire that the provisions of this Act should be extended to such community he may, by notification in the Gazette of India, declare that the provisions of this Act with the substitution of the word "Khojahs" or "Khoja" as the case may be, for the word "Hindus" or "Hindu" wherever those words occur shall apply to that community in such area as may be specified in the notification, and this Act shall thereupon have effect accordingly.

[illegible] the whole or any part of India where he is satisfied that the community in question desires the extension.—*Report of the Select Committee.*

THE HINDU GAINS OF LEARNING ACT, 1930.

ACT NO XXX OF 1930

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 25TH JULY, 1930.

An Act to remove doubt as to the rights of a member of a Hindu undivided family in property acquired by him by means of his learning.

WHEREAS it is expedient to remove doubt and to provide an uniform rule as to the rights of a member of a Hindu undivided family in property acquired by him by means of his learning;

It is hereby enacted as follows :—

Short title and extent

1. (1) This Act may be called the Hindu Gains of Learning Act, 1930.

(2) It extends to the whole of British India.

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* Substituted by Act XXI of 1929. † Act IV of 1882.

Notes.—'This Bill reproduces what, it is submitted, is the true rule of the Hindu Law in the matter of individual and personal earning by the member of a joint family. It derives support from the equitable and liberal spirit which pervades the utterances of the *Smriti* writers (with almost a solitary exception) on the subject-matter of this Bill and which forms quite a contrast to the narrow views of the latter-day commentators and the decisions based thereon. The opinion of many eminent British Indian Judges, including their lordships of the Privy Council, who have approached the subject without prepossession, is distinctly in favour of the

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which induces a wealthy me
investment in landed property,

"An important result of the proposed Bill will be that it will immensely improve the position of the female members of a Hindu family. The widow and the daughter of the acquirer, often left helpless, will, in the absence of male issue, take by inheritance the deceased's gains of learning, in preference to distant male members who can, under the present law, lay claim to the same by survivorship.

"The present rule is archaic. It is based upon a misconception of the true spirit of the Hindu Law and has, in modern conditions of Hindu Society, the effect of stagnation. It breeds most wasteful litigation, as is obvious to any one, who has even a cursory acquaintance with reported Indian decisions or the daily cause lists of judicial tribunals. It is necessary that the original doctrine should be revived, which will set the spirit of private enterprise and individual exertion once more free from the trammels imposed in later times.

"The Bill aims at laying down the
times and in terms free from ambig
and doubt which hang round the q
existing law which it seeks to intro
learning on the same footing as those of ordinary education. There are cogent reasons, in modern conditions of life for the adoption of such a course. Any other plan must result in impracticable and fanciful distinctions and anomalies. To refer only to one case which is fruitful source of harassing litigation. The issue is comparatively clear as to cases where the education imparted at the expense of the family fund is a purely elementary one. (*Lakshman* v *Jamnabai*, 6 B. 225). It is equally clear where such instruction is in a special branch of education for instance, training for the I. C. S. (*Gokul Chand.* v. *Hukum Chand.* L. R. 48 I. A. p. 162) But the issue is not clear in cases which fall neither is the one nor in the other category.

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XIII, Verse
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acquisition itself was made with the aid of family funds, it was divisible among the

siderable fluctuations. At first it was held that the gains of an ordinary general

education at all events the ordinary gains of such education, were partible; if the education was imparted at the family expense or was received by a person in the enjoyment of a family maintenance. Latterly, however, the tendency of the Courts has been in favour of the opposite view, *viz.*, that the gains of education imparted at the expense of the family are divisible only when the education is in a special branch of the science which is the source of acquisition and not the elementary or general education which is the necessary stepping stone to the acquisition of all science. The view taken by the Courts at the present time is opposed to the ancient texts, and is based upon distinctions of an unworkable character which have caused great uncertainty and confusion in their practical application They place one class of earnings at a great disadvantage. The large
means of merely of an ordinary or
separate property but the compara-
ich acquires property by means of a
must divide its gains with the other
ifficulty in working out the distinction
drawn between the two classes of cases. What is special or scientific education and what is ordinary or general education is a matter which it is extremely difficult to determine. The standard of education varies in different localities, in different classes and in different families. It is also shifting from time to time. What might at one time have been regarded as extraordinary education becomes ordinary education after the lapse of some years. What might be ordinary education in the case of a wealthy family would be extraordinary education in a family of scanty mea
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wealth and a means of promoting the progress of the community

"The question did not assume any great importance till modern times, for self-acquisitions were comparatively rare Under the old conditions of life, when the members of a family all lived together in the same place and followed the same *occupation there was seldom any scope for such acquisition. But under the altered* conditions of present day life when the joint family is constantly splitting up and the members leave their ancestral home for different places to seek their living by new pursuits, not merely is the strengh of the family tie considerably loosened but the amount of the acquisitions of the individual members is, in the main, determined *by the capacity, character and special ap itude of the individual.*

"It can not be denied that the consequences of the present law are unfair to the acquirer and his widow and female issue So long as he remains an undivided member of the family, the other members have an equal share in his earnings during his life time, and the acquirer cannot make a gift, *inter vivos* or after his death, out of his acquisitions even to his own daughter or widow, in order to redress the inequalities of the Hindu Law of Intestate Succession The idle members of
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g a widow and
y has a bare
claim to maintenance A more shocking case of injustice can hardly be imagined. The proposed measure will have the effect of raising in some cases at least, the status of women and up-lifting them out of a position of helpless dependence in *which they are placed by the present law.*

esent law checks the
compelling the acquirer
the law. It exercises

a demoralizing influence upon his character by inducing him to have recouse to dishonest subterfuges like *benami* transactions.

"Likewise, the present rule is not favourable to the growth of self-reliance among the dependent members of the family. In a rich family, it offers a premium to extravagance, idleness and perpetual discord. Its injustice is manifestly galling. Take, *e. g.*, a case in which a father has three sons and incurs the same expenditure on their education. He sends them all to England to be educated for the I. C. S; one is successful, the other two fail. Of the two who fail one takes to trade, the other is unwilling to do any work and remains idle. The trader earns a large fortune which the present law allows him to keep to himself because his education in England was for the Civil Service and not for trade. But out of the earnings of the Civilian two shares are claimed, one by the trader and the other by the brother who has been idle. The trader keeps his own earnings and also takes a share of the Civilian's earnings. Take again a case in which three brothers are given by their father the same education for the same profession and at the same cost. Though they have had the same start in life the degree of success attained by them may vary ... nd other advantages, natural or ... more successful brother should be compelled to share his earnings with his le... here that the claim of a brother to support and by his more fortunate brother, but the claim ... ognition. Knowing as we all do the ... would be absurd to contend that, if ... igation would cease to be recognised ... non-Hindu races.

'There is, likewise, ample basis for the view that the ancient Hindu Law did not regard a person who spent money upon the education of a member of his family as having any legal right to re-imbursement or return of the outlay. Ages ago, it was laid down by the Smritis, and it is still the law, that an educated member of the family is entitled to demand a partition at any time and his share is not liable to be debited with even a farthing of the cost of his education, however high it may have been Nor can the member who has made the outlay compel the member, educated at his expense, to earn or to save or even to postpone his demand for partition, and it is perfectly true to assert that a member of the family who spends money for another's education has no legal right to any return of the outlay. His expectation of benefit, if any, is a mere moral expectation, and it is neither necessary nor feasible to clothe it with legal sanction without violating the most deep-rooted principles of the Hindu Law.'

'If an educated member of a family, unrestrained by feelings of delicacy, forces a partition as soon as he begins to earn, the family has no legal claim upon him for ... joint, should, in return of his generosity, be subjected to the penalty of a forfeiture of the greatest part of his own acquisitions.

'The Bill will also have the effect ... of the education and the means by whic... ties of such an enquiry in any suit ... mous, especially when it takes place a... after the completion of his education. In most cases, such an enquiry is very harassing, when conducted at the expense of the estate and with a helpless widow or daughter on the defensive.

'No fear need be entertained that the present Bill if passed into law will lead to the violent break up of the joint-family system, for while the existing law furnishes the strongest inducement to the educated members to separate himself as soon as he begins to make a respectable income, the Bill, on the other hand, would remove this inducement ...

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "acquirer" means a member of a Hindu undivided family, who acquires gains of leaning ;

[illegible] ll acquisitions of property made sub- [illegible] such acquisitions be made before or [illegible] and whether such acquisitions be the [illegible] such learning ; and

(c) "learning" means education whether elementary, technical, scientific, special or general, and training of every kind which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life.

Notes.—*Vide* notes under section 1.

Gains of learning not to be held not to be separate property of acquirer merely for certain reasons.

3. Notwithstanding any custom, rule or interpretation of the Hindu Law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of—

(a) his learning having been, in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of the joint funds of his family, or with the aid of the funds of any member thereof.

(b) himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part by the joint funds of his family, or by the funds of any member thereof.

Notes.—*Vide* notes under section 1.

Criticism —"The effect of this section, though it does not seem to be contemplated, will be to tell parents and guardians hereafter to beware how they spend their money upon the special education of one or more boys, to the detriment as it must be, of the rest of the family."—*Notes of Dissent by Mr. N. C. Kelkar.*

Savings.

4. This Act shall not be deemed in any way to affect—

(a) the terms or incidents of any transfer of property made or effected before the commencement of this Act ;

(b) the validity, invalidity, effect or consequences of anything already suffered or done before the commencement of this Act ;

(c) any right or liability created under a partition, or an agreement for a partition, of joint family property made before the commencement of this Act ; or

(d) any remedy or proceeding in respect of such right or liability ,

or to render invalid or in any way affect anything done before the commencement of this Act in any proceeding pending in a Court at such commencement ; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

Notes.—'The only changes which we have introduced into the Bill are of a formal nature and not affecting the substance Clause 4, as amended, is based on section 63 of Act XX of 1929'—*Report of the Select Committee.*

a demoralizing influence upon his character by inducing him to have recouse to dishonest subterfuges like *benami* transactions.

"Likewise, the present rule is not favourable to the growth of self-reliance among the dependent members of the family. In a rich family, it offers a premium to extravagance, idleness and perpetual discord. Its injustice is manifestly galling. Take, *e. g.*, a case in which a father has three sons and incurs the same expenditure on their education. He sends them all to England to be educated for the I. C. S; one is successful, the other two fail. Of the two who fail one takes to trade, the other is unwilling to do any work and remains idle. The trader earns a large fortune which the present law allows him to keep to himself because his education in England was for the Civil Service and not for trade. But out of the earnings of the Civilian two shares are claimed, one by the trader and the other by the brother who has been idle. The trader keeps his own earnings and also takes a share of the Civilian's earnings. Take again a case in which three brothers are given by their father the same education for the same profession and at the same cost. Though they have had the same start in life the degree of success attained by them may vary according to the differences of aptitude, character and other advantages, natural or accidental. Is there any reason in this case why the more successful brother should be compelled to share his earnings with his less able brothers? It is not suggested here that the claim of a brother to support and assistance should not be recognised by his more fortunate brother, but the claim should rest upon purely moral sanctions and should not be invested with any legal recognition. Knowing as we all do the great intensity of family ties among Hindus, it would be absurd to contend that, if legal obligations were removed, the moral obligation would cease to be recognised even to the extent to which it prevails among non-Hindu races.

'There is, likewise, ample basis for the view that the ancient Hindu Law did not regard a person who spent money upon the education of a member of his family as having any legal right to re-imbursement or return of the outlay. Ages ago, it was laid down by the Smritis, and it is still the law, that an educated member of the family is entitled to demand a partition at any time and his share is not liable to be debited with even a farthing of the cost of his education, however high it may have been Nor can the member who has made the outlay compel the member, educated at his expense, to earn or to save or even to postpone his demand for partition, and it is perfectly true to assert that a member of the family who spends money for another's education has no legal right to any return of the outlay. His expectation of benefit, if any, is a mere moral expectation, and it is neither necessary nor feasible to clothe it with legal sanction without violating the most deep rooted principles of the Hindu Law.'

'If an educated member of a family, unrestrained by feelings of delicacy, forces a partition as soon as he begins to earn, the family has no legal claim upon him for

against the other members but confers benefits upon them during the time they are joint, should, in return of his generosity, be subjected to the penalty of a forfeiture of the greatest part of his own acquisitions.

'The Bill will also have the effect of presenting an inquiry into the character of

sing, when conducted at the expense of the estate and with a helpless widow or daughter on the defensive.

'No fear need be entertained that the present Bill if passed into law will lead to the violent break up of the joint-family system, for while the existing law furnishes the strongest inducement to the educated members to separate himself as soon as he begins to make a respectable income, the Bill, on the other hand, would remove this inducement

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Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "acquirer" means a member of a Hindu undivided family, who acquires gains of leaning ;

(b) "gains of learning" means all acquisitions of property made substantially by means of learning whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or the extraordinary result of such learning ; and

(c) "learning" means education whether elementary, technical, scientific, special or general, and training of every kind which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life.

Notes.—*Vide* notes under section 1.

Gains of learning not to be held not to be separate property of acquirer merely for certain reasons.

3. Notwithstanding any custom, rule or interpretation of the Hindu Law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of—

[illegible], in whole or in part, imparted to him [illegible] his family, or with the aid of the joint fa[illegible] funds of any member thereof.

(b) himself or his family having, while he was acquiring his learn[illegible], been maintained or supported, wholly or in part by the joint funds of his fam[illegible] or by the funds of any member thereof.

Notes.—*Vide* notes under section 1.

Criticism.—"The effect of this section, though it does not seem to be conte[illegible]plated, will be to tell parents and guardians hereafter to beware how they [illegible] their money upon the special education of one or more boys, to the detriment [illegible] must be, of the rest of the family."—*Notes of Dissent by Mr. N. C. Kelkar*

Savings.

4. This Act shall not be deemed in [illegible] way to affect—

(a) the terms or incidents of any transfer of property made or [illegible] before the commencement of this Act ;

(b) the validity, invalidity, effect or consequences of anything [illegible] suffered or done before the commencement of this Act ;

(c) any right or liability created under a partition, or an agre[illegible] for a partition, of joint family property made before the commencement of [illegible] Act ; or

(d) any remedy or proceeding in respect of such right or liability, or to render invalid or in any way affect anything done before the com[illegible]ment of this Act in any proceeding pending in a Court at such com[illegible]ment ; and any such remedy and any such proceeding as is herein refer[illegible]to may be enforced, instituted or continued, as the case may be, as [illegible] Act had not been passed.

Notes.—"The only changes which we have introduced into the Bill a[illegible] formal nature and not affecting the substance. Clause 4, as amended, is ba[illegible] section 63 of Act XX of 1929."—*Report of the Select Committee*

THE HINDU INHERITANCE (REMOVAL OF DISABILITIES) ACT, 1928.

ACT NO. XII OF 1928.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 20TH SEPTEMBER, 1928.

An Act to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts.

WHEREAS it is expedient to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts; It is hereby enacted as follows:—

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curable, sanious or ulcerous leprosy, impotency or other incurable disease. These disqualifications owe their origin to the obvious reason that those who take no hand in fighting should take no hand in the estate. The old reason has disappeared but

upon a different footing The bill is intended to remove from the law its obsolete and spent provisions in which there is now no parallel elsewhere. They disfigure that law and make it harsh and unjust."—*Statement of Objects and Reasons.*

Short title, extent and application.

1. This Act may be called the Hindu Inheritance (Removal of Disabilities) Act 1928.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall not apply to any person governed by the Dayabhaga School of Hindu law.

Notes.—This Act makes the decision of *Ram* v. *Lalla*, 8 C. 149; *Ram* v. *Ram*, 8 C 919 and *Vithel* v. *Woman*, 68 Ind Cas. 111; *Ram* v. *Bhani*, 38 A. 127 obsolete. It also qualifies the decision of the Madras High Court reported in 43 M. 464=38 M. L. J 291, where the Court came to the conclusion that the right comes into existence at birth, subsists all through, although it is incapable of enforcement at the time of partition, because of the disqualification then existing. Now it can be enforced at the time of partition by the committee or guardian of the lunatic if the lunacy is not congenital. It affirms the decision of the Allahabad High Court in 28A 247.

Dayabhaga School.—In Bengal insanity need not be congenital nor incurable in order to exclude a person from inheritance. *Wooma* v. *Girish*, 10 C. 639.

Persons not be excluded from inheritance or rights in joint family property.

2 Notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity, or physical or mental defect.

Notes—Subsequent insanity does not divest a co parcener of the interest vested in heir by birth. 28 A. 247 Blindness, lameness, impotency and other defects must

be congenital in order to deprive a man of the inheritance. 43 M. 464=38 M. L. J 291; 45 C. 17 P. C =22 C. W. N. 74=26 C. L. J 557; 45 M. 945=43 M. L. J. 596 =69 Ind. Cas 313, 69 P. R. 1919=52 Ind. Cas 919; 1 B. 557; 1 B 177; 26 M. 133. These defects should also be incurable. 23 W. R. 78; 1 B. 177; 18 C 327; 23 Bom. L. R. 1320; 26 M. L. J. 508. The onus is on the person who wants to exclude. 47 A. 327=86 Ind. Cas 554.

Saving and exception.

3. Nothing contained in this Act shall affect any right which has accrued or any liability which has been incurred before the commencement thereof, or shall be deemed to confer upon any person any right in respect of any religious office or service or of the management of any religious or charitable trust which he would not have had if this Act had not been passed.

Notes.—This section lays down that vested right shall not be divested by the virtue of this Act.

THE HINDU LAW OF INHERITANCE (AMENDMENT) ACT, 1929.

ACT NO. II OF 1929.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 21ST FEBRUARY, 1929.

An Act to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate.

WHEREAS it is expedient to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate, It is hereby enacted as follows.—

Notes—The object of this Act is to give the sister a higher position as heir in those provinces where she is already an heir as well as to recognize her as heir in those provinces governed by *Mitakshara* law where she is not an heir A. I. R 1933 Oudh 231=10 O W N 424 The Act is not retrospective in effect. 146 Ind Cas. 511=34 P. L. R 964=A. I. R 1933 Lah. 777; 1933 M. W N 1404. This Act applies only to cases where a Hindu dies after the passing of the Act. It has no application to a case where a Hindu intestate dies before the passing of the Act but where the succession opens after the passing of the Act on account of intervention of a life-estate holder. 1933 M. W N 1404; but see 13 Lah. 178=130 Ind Cas 291=33 P L. R. 423=A. I. R. 1932 Lah 361.

Short title, extent and application.

1. (1) This Act may be called the Hindu Law of Inheritance (Amendment) Act, 1929.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, but it applies only to persons who, but for the passing of this Act, would have been subject to the law of Mitakshara in respect of the provisions herein enacted, and it applies to such persons in respect only of the property of males not held in coparcenary and not disposed of by Will.

Notes—This Act is intended to remove a sex disqualification which under the

that system the sister is not an heir though the sister's son is expressly mentioned the Dayabhaga as the heir while the son's daughter and the daughter's daughter

no place at all. In fairness to Bengal the Bill should have been extended even to that province but an objection was taken in the first Assembly to its extension to that province and its provision was therefore, restricted to the two provinces of the Mitakshara country." *Statement of Objects and Reasons.* The Act was designed to constitute sister as heir even in provinces where she was not previously heir under Hindu Law. 10 O. W. N. 424=A. I. R. 1933 Oudh 231. The Act is not retrospective. A. I. R. 1933 Lah. 777 ; see also A. I. R. 1933 Pat. 324=15 P. L. T. 707=150 Ind. Cas. 1039.

Order of succession of certain heirs.

2. A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother :

Provided that a sister's son shall not include a son adopted after the sister's death.

Notes —This section is intended to include the son's daughter daughter's daughter, and the sister amongst heritable *bandhus* which they are not under the Hindu law and improves the position of the sister's son by placing him immediately after the grand-father but before the grand uncle. This does not exhaust a very large number of female relations, *e. g*, the son's son's daughter, the brother's daughter, the sister's daughter who still remain outside the pale of heritable *bandhus. Statement of Objects and Reasons.* It is regrettable that son's window's claim has not been considered in this Act. Sister in this section does not include half-sister either uterine or consanguine 145 Ind. Cas. 529=1933 A. L. J. 680=A. I. R. 1933 All. 491 (F. B). In Bombay a sister is a preferential heir to the brother's widow. 57 B. 377=144 Ind. Cas 925=35 Bom. L. R. 397=A. I. R. 1933 Bom. 272. A sister is an heir. A. I. R. 1934 All. 469; see also A. I. R. 1932 Lah. 361=33 P. L. R. 423=13 Lah. 178.

Savings.

3. Nothing in this Act shall—

(*a*) affect any special family or local custom having the force of law, or

(*b*) vest in a son's daughter, daughter's daughter or sister an estate larger than, or different in kind from, that possessed by a female in propety inherited by her from a male according to the school of Mitakshara law by which the male was governed. or

(*c*) enable more than one person to succeed by inheritance to the estate of a deceased Hindu male which by a customary or other rule of succession descends to a single heir.

Notes —The exclusion of sister in the province of Oudh was not by virtue of any local custom but by virtue of Hindu Law. A. I. R. 1933 Oudh. 231=10 O. W. N. 424.

THE HINDU WIDOWS RE-MARRIAGE ACT, 1856.

ACT NO XV OF 1856.

RECEIVED THE G.-G.'S. ASSENT ON THE 25TH JULY, 1856.

An Act to remove all legal obstacles to the marriage of Hindu Widows.

Preamble.

WHEREAS it is known that, by the law as administered in the Civil Courts established in the territories in the possession and under the government of the East India Company, Hindu widows, with certain exceptions are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property ;

and whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance

with a true interpretation of the precepts of their religion, and desire that the civil law administered by the Courts of Justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own conscience; and whereas it is just to relieve all such Hindus from this legal incapacity of which they complain; and the removal of all legal obstacles to the marriage of Hindu widows will tend to the promotion of good morals and to the public welfare; It is hereby enacted as follows—

Note.—14 W. R. O. J. 23.

Marriage of Hindu widows legalized.

1. No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu law to the contrary notwithstanding.

Notes—See 4 P. R. 1905; 61 P R. 1905; 15 P. L R. 1907; 46 P. R. 1891; 33 B. 107, 49 P. R. 1903; 19 C. 289; 16 C. P. L. R. 99; 8 A. 143. See also 6 M. 381.

Rights of widow in deceased husband's property to cease on her re-marriage

2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any Will or testamentary disposition conferring upon her without express permission to remarry only a limited interest in such property, with no power of alienating the same, shall upon her remarriage, cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

Notes.—A Hindu widow after remarriage forfeits her right in her deceased husband's estate although there is a custom of remarriage in her caste. 14 C. W. N. 345=5 Ind. Cas. 710; 33 B. 32; 22 A. 321; 22 C 589; 1 M 226; 15 Ind. Cas 602; 21 C W. N. 906, but *see* 7 A L J 417; 31 A. 161; 29 P. L. R. 1901; 29 A. 122. According to Allahabad H C. she also does not lose her right of maintenance by remarriage where such marriages are allowed by custom. 31 A. 161. See also 28 Ind. Cas 399; 32 Ind Cas. 338; 24 Ind Cas 691, A. I R. 1931 Oudh 107=121 Ind. Cas. 899=5 Luck 689; 32 P. L. R. 108=A I R. 1931 Lah 103; A. I. R. 1932 All 617 (F. B)=1932 A. L J. 941=140 Ind. Cas. 631. She is not only divested of all her estate thus inherited but also thereafter becomes incapable of inheriting any property which but for such remarriage she would have inherited from a lineal successor 1 N L. R. 171. But in Bombay cases it has been held that a Hindu widow after her marriage may inherit property from her son by her first husband. 29 B 91=6 Bom. L R. 779; 26 B. 388=4 Bom. L. R. 73; 28 M 425; 6 N L. R. 103; 11 A 330; 8 Ind. Cas. 269; 20 A. 476; 10 W R. 34; 4 Bom. L. R. 73 Now the question is does a Hindu widow who has ceased to be a Hindu before her marriage by conversion, forfeit her rights to her husband's property? According to Calcutta and Madras decisions she does—19 C. 289 (F. B.); 41 Mad. 1078 (F. B) 48 Ind. Cas 50 (F B.). But according to the Allahabad decision she does not. 35 A. 466, 11 A. L J. 678. A mother does not lose her right by remarriage in cases when the marriage is recognised as valid custom. A. I. R 1933 Lah. 817; see also A. I. R. 1932 All 617=1932 A. L. J. 941; 5 Luck. 689.

Alienation—An alienation made by a Hindu widow without any legal necessity will not bind the reversioner, even during her lifetime, if she remarries whether, if a custom were proved according to which a remarrying widow is entitled to retain property inherited from her husband, such a custom would not be given effect to inspite of the provisions of the Widows' Remarriage Act.—15 Ind. Cas. 602, 8 Ind. Cas. 269; 34 L W. 967=1931 M. W. N. 1257=62 M. L. J. 131=A. I. R. 1932 M. 102

Guardianship of children of deceased husband on the re-marriage of his widow.

3. On the remarriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted, by the Will or testamentary disposition of the deceased husband, the guardian of his children, the father or paternal grand-father or the mother, or the paternal grand mother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court, having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be guardian of the said children and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who, when appointed, shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother; and in making such appointment, the Court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother:

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother, unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

Notes.—*Vide* 11 B. 119. Loses right of guardianship.—10 M. L. J. 309 But does not lose her right to give in her son by her former husband to adoption—33 B. 102. But see 24 B. 89 Section 3 only deprives her of her preferential right to act as guardian of her children by her first husband but it does not compel the Court to remove her from such guardianship. 15 C. W. N. 579; 38 C. 863 *See* also 4 A. 195. Mother does not lose right of guardianship of minor son on remarriage where remarriage is permitted by custom. A. I. R. 1933 Lah. 817.

Nothing in this Act to render any childless widow capable of inheriting.

4. Nothing in this Act contained shall be construed to render any widow, who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting the whole or any share of such property, if before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow.

Saving of rights of widow marrying, except as provided in sections 2, 3 and 4.

5. Except as in the three preceding sections is provided, a widow shall not, by reason of her re-marriage, forfeit any property, or any right to which she would otherwise be entitled; and every widow who has remarried shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

Note.—*Vide* 11 W. R. 82.

Ceremonies constituting valid marriage to have same effect on widow's marriage.

6. Whatever words spoken, ceremonies performed, or engagements made, on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect, if spoken, performed or made on the marriage of a Hindu widow, and no marriage shall be declared invalid on the ground that such words, ceremonies or engagements are inapplicable to the case of a widow.

Consent to remarriage of minor widow.

7. If the widow remarrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father, or, if she has no father, of her paternal grand father, or, if she has no such grandfather, of her mother, or failing all these, of her elder brother, or, failing also brothers, of her next male relative.

Punishment for abetting marriage made contrary to this section.

All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year, or to fine, or to both.

Effect of such marriage.

Proviso.

And all marriages made contrary to the provisions of this section may be declared void by a Court of law : Provided, that in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

Consent to remarriage of major widow.

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her remarriage lawful and valid.

Notes.—The marriage of a minor widow is not valid unless there has been consent of the person enumerated. 12 Ind Cas. 623

THE ILLUSORY APPOINTMENT AND INFANTS PROPERTY ACT, 1841.

ACT XXIV OF 1841

An Act for the greater uniformity of the law administered by Her Majesty's Supreme Courts with that administered in England, in regard to the undisposed residue of the effects of testators, Illusory Appointments, the transfer of Estates by persons under disabilities pursuant to the direction of Courts, and the better management of the property of such persons and other like matters.

1. Repealed by Act VIII of 1868

2.* The statute 11 George IV and 1 William IV Chapter 46, entitled. "An Act to alter and amend the Law relating to Illusory Appointments" and the statute 11 "George IV and 1 William IV, Chapter 65, entitled "An Act for consolidating and amending the law relating to property belonging to infants, *feme-coverts*, idiots, lunatics and persons of unsound mind," shall* be extended to the territories of the East India Company, as far as it is applicable to the same.

3. Repealed by Act XXVII of 1866

Extension of 11 Geo. IV and 1 Wim IV.c. 47 ss 10 and 11.

4* Section 11 of the 11 George IV and 1 William IV, Chapter 47, entitled "An Act for consolidating and amending the laws for facilitating the payment of debts out of real Estate", shall be extended to the territories of the East India Company, as far as it is applicable in the same.

Saving of certain cases and proceedings

5.* This Act shall not be construed to affect any case which would not have been governed by English law as administered by Her Majesty's Supreme Courts previous to the passing thereof.

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* Certain words before this repealed by Act XVI of 1874 have been omitted.

THE INDIAN INCOME TAX ACT, 1922.

ACT NO XI OF 1922.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 5TH MARCH, 1922,

An Act to consolidate and amend the law relating to Income-tax and Super-tax.

WHEREAS, it is expedient to consolidate and amend the law relating to Income-tax and Super-tax ; It is hereby enacted as follows :—

Notes.—Interpretation with reference to English cases is not proper. A. I. R. 1933 P. C. 138 (P. C.)=59 C. 1343=59 I. A. 206=36 C. W. N. 63. Income tax should be construed in favour of subject. 12 P. L.T. 384=10 Pat. 315=A. I.R. 1931 Pat. 451 ; see also 55 B. 312=33 Bom. L. R. 388.

Short title, extent and commencement.

1. (1) This Act may be called the Indian Income-tax Act, 1922.

(2) It extends to the whole of British India including the British Baluchistan and the Sonthal Parganas and applies also, within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor-General in Council in that behalf, and to all other servants of His Majesty in those dominions.

(3) It shall come into force on the first day of April, 1922.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "agricultural income" means—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in British India or subject to a local rate assessed and collected by officers of Government as such ;

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in kind of any process ordinarily employed by a cultivator or receiver of rent in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, in respect of which, no process has been performed other than a process of the nature described in sub-clause (ii) ;

(c) any income derived from any building, owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub clauses (ii) and (iii) of clause (b) is carried on ,

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or [illegible] .he land, [illegible]

(3) "Assistant Commissioner" means a person appointed to be an Assistant Commissioner of Income-tax under section 5 ;

(4) "business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture ;

(4A)* "The Central Board of Revenue" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924.

(5) "Commissioner" means a person appointed to be a Commissioner of Income-tax under section 5 ;

(6) "company" means a company as defined in the Indian Companies Act, 1913 ; † or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which "the Central Board of Revenue"‡ may, by general or special order, declare to be a company for the purposes of this Act ,

"(6A)§ 'firm', 'partner' and 'partnership' have the same meanings respectively as in the Indian Contract Act, 1872"

(7) "Income-tax Officer" means a person appointed to be an Income-tax Officer under section 5 ;

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(10) "prescribed" means prescribed by rules made under this Act ;

(11) "previous year" means—

(*a*) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up :

Provided that if this option has once been exercised by the assessee, it shall ... the expression "previous ... the consent of the Income- ... fit ; or

(*b*) in the case of any person, business or company or class of persons, business or company, such period as may be determined by "the Central Board of Revenue"* or by such authority as the Board may authorise in this behalf ;

(12) "principal officer," used with reference to a local authority or a company or any other public body or "any"† association, means—

(*a*) the secretary, treasurer, manager or agent of the authority, company, body or association ; or

(*b*) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof ;

(13) "public servant" has the same meaning as in the Indian Penal Code ‡ ;

"(14) 'registered firm' means a firm registered under the provisions of section 26A ;" §

(15) "total income" means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down

firm.

purchase of

W N 1047.

* Sub. Sec 4A has been inserted by Act 4 of 1924.

† Act VII of 1913.

‡ Substituted by Act 4 of 1924.

§ *Inserted by Act 21 of 193* .

† The word within quotations has been inserted by Act 11 of 1924.

‡ XLV of 1860.

The *Selami or premium* paid for the settlement of waste land is agricultural income. 25 C. W. N. 80=32 C. L. J. 432. Income derived from toddy extracted from cocoanut trees situated on land assessed to Government Revenue is agricultural

, iot cover the
n extracting
50 M. 204

As regards the liablity of mutation *nazarana* to income-tax. 53 C. 34=A. I. R. 1925 Cal. 929. Income derived by letting out land for purposes of stocking timber

sub-section (2) of section 22. 27 Bom. L. R. 223=86 Ind. Cas 851, see also 89 Ind. Cas. 92. Income derived from pasturage is agricultural income and can not be assessed to income tax. 51 C. 504=1924 Cal. 668.

Clause 2 (2)—Definition of assesee only applies to living person 133 Ind. Cas 261=33 Bom. L. R. 388=55 B. 312=A. I. R. 1931 Bom. 333.

Clause 2 (4)—Definition of business is not exhaustive. 57 B. 519=35 Bom. L. R. 896

Income connotes periodical monetary return. A. I. R. 1931. P. C. 138 (P. C.) =59 I. A. 206=59 C. 1343=36 C. W. N. 653. What is taxable is profit earned by production. *Ibid.*

Section 2 (11) (B)—Where a firm commenced business on the 18th April 1923 the Income tax authorities would be justified in assessing for 1924-25 on the profits realised during the 11 months and 13 days of 1923-24, or in accepting as the accounting period, the time from 18th April 1923 to 17th April 1924. 96 Ind. Cas. 368.

S 2 (12)—Official *liquidator* if he manages business is the principal officer. 1934 A. L. J. 221

CHAPTER I.

CHARGE OF INCOME TAX.

3. Where Any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every "individual, Hindu undivided family, company, firm and other association of individuals."*

Charge of income-tax.

who have agreed to take the auction-work and
ion on the
19 (F. B).
together
to lend money to each other is exempt . 381 ; A. I. R. 1923 Mad. 684 ; A. I. R 1927 Mad. 1078=53 M. L. J. 881. The conversion of a joint Hindu family into a registered firm does not in any way affect the profits made by the firm before the conversion on the legal liability to income-tax which already existed before the conversion 49 A. 911. Certain ice manufacturing firms formed into a selling association to prevent underselling and fix the rate at which ice was to be sold *Held* the selling association was a separate firm and liable to assessment on that basis. 92 Ind. Cas. 257=A. I. R. 1926 Oudh 191. All income from business arising or received or deemed so to arise or be received in British India is taxable under the ss. 3 and 5. 52 C. L.=83 Ind. Cas. 273. Annuity received in British India but enjoyed in Mysore is taxable. 39 M. 885=31 Ind. Cas. 401=

* The words within quotations have been substituted by Act II of 1924.

(1916) 1 M. W. N. 122. Under section 3 of this Act, the assessment payable for a current year is the actual income made in the previous year. The income of the previous year is not to be treated merely as a measure of the unascertained in-

who for time being fills in the character of Lord Bishop of Lucknow is income within S. 3 and comes within the term "salary" 137 Ind. Cas. 84=54 A. 223=1931 A. L. J. 1107=A. I. R. 1932 All. 151.

Application of Act.

4. (1) Save as hereinafter provided, this Act shall apply to all income, profits or gains, as described or comprised in section 6, from whatever source derived, accruing, or arising, or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

(2) "Income, profits and gains"* of a business accruing or arising without British India to a person resident in British India "shall if they are received in or brought into British India, be deemed to have accrued or arisen in British India" and to be "income, profits and gains of the year in which they are so received or brought,"† notwithstanding the fact that they did not so accrue or arise in that year :‡

"Provided that nothing contained in this sub-section shall apply to any income, profits or gains so accruing or arising prior to the 1st day of April, 1933, unless they are income, profits or gains of a business and are *received in or brought into British India within three years of the end of* the year in which they accrued or arose :

Provided further that nothing in this sub-section shall apply to income from agriculture arising or accruing in a state in India from land for which any annual payment in money or in kind is made to the state."§

Explanation.—"Income, profits or gains"* accruing or arising without British India shall not be deemed to be received or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in the balance-sheet prepared in British India.

(3) *This Act shall not apply to the following classes of income :—*

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.

(ii) *Any income of a religious or charitable institution derived from* voluntary contributions and applicable solely to religious or charitable purposes

(iii) The income of local authorities.

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* Substituted by Act 12 of 1933

† The words within quotations have been substituted by Act of 1923.

‡ Certain words after this repealed by Act 12 of 1933 have

§ Inserted by Act 12 of 1929.

(iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1897,* applies.†

(v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such Provident Fund.

(vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

(vii) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.

(viii) Agricultural income.

"(ix) Any income received by trustees on behalf of a recognised provident fund as defined in clause (*a*) of section 58A."‡

In this subsection "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.

Clause (1)—The profits of a company arose or accrued outside British India cannot be said to have received in British India simply because the company is

e up in British India. 45 B.

: sent to British India during

India' 1916 M. W. N. 122. A.

: profits of the quaries under this section 25 A. L. J. 816. Where by compromise an agent gets a commission of 2 lacs within British India, the income is derived in British India. 102 Ind. Cas. 298= A.I.R. 1927 Lah. 512 ; see also 50 Mad.

of purchase money in excess over principal and expenses is interest realized and

P. C.). In

iation of

receive

profits in British India, Company is liable to be taxed on "income received in British India." A. I. R. 1931 P. C. 165 (P. C.).=54 C L. J 381=35 C. W. N. 895=33 Bom. L. R. 1263=54 M. 691=58 I. A. 239. Money received by company under use and occupancy policies insuring against loss by fire is receipt that arises from business. 63 M. L. J. 348=A. I. R. 1932 P. C. 121 (P. C). Payment for loss of agency is compensation. 58 C. 1153=35 C. W. N. 36=A. I. R. 1931 Cal. 676 (S. B.). Income from fisheries is not agricultural income. A. I. R. 1932 Mad. 757 (S. B.)=63 M. L. J. 634=56 M. 251. Rent of land used for agricultural purpose is exempt from income-tax. A. I. R. 1934 Pat. 178 (S B.)=13 Pat. 336=15 P. L. T. 85=147 Ind. Cas. 1236. Royalty actually coming in the hands of the assessee should be taxed. A. I. R. 1934 Pat. 116 (S. B)=15 P. L. T. 11=13 Pat. 197. The source of the income must be considered in its proximate rather than in its ultimate significance. A. I. R. 1934 Pat. 178=15 P. L. T. 85.

Sub-section (2)—*Vide* 49 M. 910 ; 50 Ind. Cas. 853 ; 53 M. 847 ; (1926) M. W. N. 740=24 L W. 685 ; A I.R. 1933 Mad. 4 ; 63 M. L. J. 796. The term "income" when contrasted with "capital" means and includes not only income in its strict meaning but also profits and gains. "Income" as contrasted not with capital but with "profits" or "gains" in the Income tax Act, means "a periodically monetary

the net

the Act.

On the

pts from

earning

those receipts. A. I. R. 1934 Rang. 27 ; see 65 M. L. J. 401 (F. B).

* IX of 1897.

† Certain words after this repealed by Act 11 of 1924 have been omitted.

‡ Inserted by Act 12 of 1929.

Clause (3)—The income of a club registered under the Company's Act is not liable to be assessed. 2 Lah. 109 *Sajjadanashin of Sasseram Khankas*, not liable to be assessed with income tax. 27 C. 674.

Sub-section (3) (i)—100 Ind. Cas. 255. The word "wholly" in s 4 (3) (1) of the Income-tax Act must be read in its ordinary acceptation and is in this respect closely akin to the word "solely." The word does not mean 'mainly." 105 Ind. Cas. 155; 49 M. 833=96 Ind. Cas. 957.

[illegible] tax. 12 P. L. T. 384=10 Pat 315=A. I. R. 1931 Pat. 451.

[illegible] not liable to income-tax. A. I [illegible] generally speaking the difference between the receipts and the expenses incurred in earning them. 21 N. L. R. 175. The profits or losses arising from wagering contracts are to be taken into account in an assessment for income-tax purposes. 47 A 368=23 A L. J. 63=86 Ind. Cas. 95; A. I. R. 1934 All. 370=1934 A. L. J. 61 A receipt of a casual and non-recurring income arising from business or the exercise of a profession, vocation or occupation does not come within exception. 47 A. 372=86 Ind Cas 186=23 A. L. J. 65; see also 40 L. W. 318=1934 M. W. N. 778=A. I. R. 1934 Mad 539=67 M. L. J 247 (F. B.); A. I. R 1934 Rang. 377 (F. B)=12 Rang. 477. Unusually heavy commission on isolated transaction is not of "a casual or non-recurring" nature. 47 A. [illegible] from business" as used in s [illegible] from a business carried on cc [illegible] ngle adventure in business they would be liable to be taxed. 27 Bom. L. R 478=87 Ind. Cas 706.

[illegible] mai [illegible] alsc [illegible] as [illegible] unless it is shown by the Income-tax department that the assessee was not entitled by custom to any maintenance out of the Income of the Raj. A. I. R. 1934 All. 818 =149 Ind. Cas. 306.

CHAPTER II.

Income-tax Authorities.

Income-tax authorities.

5. (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely.—

(*a*) "*The Central Board of Revenue,*"*

(*b*) Commissioners of Income tax,

(*c*) Assistant Commissioners of Income tax, and

(*d*) Income-tax Officers †

"(3) The Governor-General in Council may appoint a Commissioner of Income-tax for any area specified in the order of appointment."‡

(4) Assistant Commissioners of Income-tax and Income-tax Officers shall, subject to the control of the Governor-General in Council, be appointed by the Commissioner of Income-tax by order in writing. They shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Commissioner of Income-tax may direct "and, where two or more Assistant Commissioners, of Income-tax or Income-tax Officers have been appointed for the same area in accordance with any orders which the Commissioner of Income-tax may

* The words within quotations have been substituted by Act 4 of 1924.

† Sub-clause (2) has been omitted by Act 4 of 1924.

‡ Substituted by Act 18 of 1933.

make for the distribution and allocation of the work to be performed ;"[*] and the Commissioner may by general or special order in writing direct that the powers conferred on the Income-tax Officer and the Assistant Commissioner by or under this Act shall in respect of any specified case or class of cases be exercised by the Assistant Commissioner and the Commissioner respectively, and for the purposes of any case in respect of which such order applies references in this Act or in any rules made hereunder to the Income tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner respectively,

e"† may by notification in the of Income-tax, Assistant Com-)fficers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified horities appointed under sub-

Income-tax Officers appointed under sub-section (4) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section, (3) for the "area"‡ in which they perform their functions.

CHAPTER III.

TAXABLE INCOME.

Heads of income chargeable to income-tax.

6. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income, tax in the manner hereinafter appearing, namely :—

(i) Salaries.
(ii) Interest on securities.
(ii) Property.
(iv) Business.
(v) Professional earnings.
(vi) Other sources.

Clause IV.—Premium income received from participating policies is not liable to income-tax A. I. R. 1931 B. 448=55 Bom. 637=33 Bom. L. R. 807; see also 56 B. 119=33 Bom. L. R. 1581=A. I. R. 1932 Bom. 104.

Clause VI—

not be deducted under s. 10—6 Pat. L. J. 62= which were included in the assets of the estate at the time of the Permanent Settlement is not liable to assessment to income tax. 44 C. L. J. 427=53 C. 524=30 C. W. N. 524. But income derived from *jalker* which was not taken into consideration at the time of fixing the *jama* at the Permanent Settlement is assessable for income-tax purpose. 54 C. 863=31 C. W. N. 765=45 C. L. J. 325. Legislature has sought to include under this head every profit or gain not

this head. A. I. R. 1934 Rang. 377 (S. B.)=12 Rang. 477.

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* Inserted by Act 18 of 1933.
† The words within quotations have been substituted by Act 4 of 1924.
‡ Substituted by Act 18 of 1933.

7. (1) The tax shall be payable by an assessee under the head "salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of Government, a local authority, a company, or any other public body or association, or by or on behalf of any private employer :

Salaries.

Provided that the tax shall not be payable in respect of any sum deducted under the authority of Government from the salary of any individual for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one sixth of the salary.

"*Explanation.*—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub section."*

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by Government or by a local authority established by the Governor-General in Council.

Notes.—Sum paid as gratuity by third person is not salary. A. I. R. 1934 Rang. 377 (S. B.) = 12 Rang. 477. But interest paid by employer on P. Fund contribution is salary. A. I. R. 1933 Rang. 45 (F. B.) = 11 Rang. 172. Transfer of shares to employee at termination of employment is not payment of salary within the section. *A. I. R. 1933 Rang. 22 (F. B). = 11 Rang. 70 = 142 Ind. Cas. 239.*

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government of India or of a Local Government or on debentures or other securities for money issued by or on behalf of a local authority or a company :

Interest on securities.

"Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of Commission by a banker realising such interest on behalf of the assessee :"†

Provided "further"† that no income-tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income-tax free :

Provided, further, that the income-tax payable on the interest receivable on any security of a Local Government issued income-tax free shall be payable by that Local Government.

Notes.—Where bank draws interest on Government securities on behalf of its constituents, he is not entitled to any deduction for paying interest to the bank for overdraft. A. I. R. 1917 Pat. 133. Costs of recovering interest can not be deducted. A. I. R. 1930 Pat. 33 = 9 Pat. 419 = 123 Ind. Cas. 617.

9. (1) The tax shall be payable by an assessee under the head "property" in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business subject to the following allowances, namely :—

Property.

(*i*) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs a sum equal to one sixth of such value ;

(*ii*) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs the difference between such value and the rent paid by the tenant up to but not exceeding one sixth of such value ;

* Added by Act 15 of 1923. † Inserted by Act 18 of 1933.

make for the distribution and allocation of the work to be performed ;"* and the Commissioner may by general or special order in writing direct that the powers conferred on the Income-tax Officer and the Assistant Commissioner by or under this Act shall in respect of any specified case or class of cases be exercised by the Assistant Commissioner and the Commissioner respectively, and for the purposes of any case in respect of which such order applies references in this Act or in any rules made hereunder to the Income tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner respectively,

(5) The "Central Board of Revenue"† may by notification in the *Gazette of India*, appoint Commissioners of Income-tax, Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified classes of persons or classes of income, by the authorities appointed under sub-

in which they perform their functions.

CHAPTER III.

Taxable Income.

Heads of income chargeable to income-tax.

6. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely :—

(*i*) Salaries.
(*ii*) Interest on securities.
(*iii*) Property.
(*iv*) Business.
(*v*) Professional earnings.
(*vi*) Other sources.

Clause IV—Premium income received from participating policies is not liable to income-tax. A. I. R. 1931 B. 448=55 Bom. 637=33 Bom. L. R. 807; see also 56 B. 119=33 Bom. L. R. 1581=A. I. R. 1932 Bom. 104.

Clause VI.—Income derived from rents and royalties of collieries are liable to be

:57. This income does not fall under clause (iv)

assessing income-tax the amount paid for road

not be deducted under s. 10—6 Pat. L. J. 62=

which were included in the assets of the estate

at the time of the Permanent Settlement is not liable to assessment to income tax.

this head. A. I. R. 1934 Rang. 377 (S. B.)=12 Rang. 477.

* Inserted by Act 18 of 1933.
† The words within quotations have been substituted by Act 4 of 1924.
‡ Substituted by Act 18 of 1933.

Salaries.

7. (1) The tax shall be payable by an assessee under the head "salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of Government, a local authority, a company, or any other public body or association, or by or on behalf of any private employer:

Provided that the tax shall not be payable in respect of any sum deducted under the authority of Government from the salary of any individual for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one sixth of the salary.

"*Explanation.*—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub section."*

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by Government or by a local authority established by the Governor-General in Council.

Notes.—Sum paid as gratuity by third person is not salary. A. I. R. 1934 Rang. 377 (S. B.)=12 Rang. 477. But interest paid by employer on P. Fund contribution is salary. A. I. R. 1933 Rang. 45 (F. B.)=11 Rang. 172. Transfer of shares to employee at termination of employment is not payment of salary within the section. *A. I. R. 1933 Rang. 22 (F. B).=11 Rang. 70=142 Ind. Cas. 239.*

Interest on securities.

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government of India or of a Local Government or on debentures or other securities for money issued by or on behalf of a local authority or a company:

"Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of Commission by a banker realising such interest on behalf of the assessee:"†

Provided "further"† that no income-tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income tax free:

Provided, further, that the income-tax payable on the interest receivable on any security of a Local Government issued income-tax free shall be payable by that Local Government.

Notes.—Where bank draws interest on Government securities on behalf of its constituents, he is not entitled to any deduction for paying interest to the bank for overdraft. A. I. R. 1917 Pat. 133. Costs of recovering interest can not be deducted. A. I. R. 1930 Pat. 33=9 Pat. 419=123 Ind. Cas. 617.

Property.

9. (1) The tax shall be payable by an assessee under the head "property" in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business subject to the following allowances, namely:—

(*i*) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs a sum equal to one sixth of such value;

(*ii*) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs the difference between such value and the rent paid by the tenant up to but not exceeding one sixth of such value;

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* Added by Act 15 of 1923. † Inserted by Act 18 of 1933.

(*iii*) the amount of any annual premium paid to insure the property against risk of damage or destruction ;

"(*iv*) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge ; where the property is subject to a ground rent, the amount of such ground rent ; and where the property has been acquired with borrowed capital the amount of any interest payable on such capital and not specifically charged upon the property itself ;"*

(*v*) any sums paid on account of land revenue in respect of the property ;

(*vi*) in respect of collection charges a sum not exceeding the prescribed maximum ;

(*vii*) in respect of vacancies such sum as the Income-tax Officer may determine having regard to the circumstances of the case :

Provided that the aggregate of the allowances made under this sub-section shall in no case exceed the annual value.

(2) For the purposes of this section the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year :

Provided that, where the property is in the occupation of the owner for the purposes of his own residence such sum shall for the purposes of this section be deemed not to exceed ten per cent of the total income of the owner.

Notes.—Annual valu ... ex-
pected by letting from ... 154.
Finding of annual value o ... with.
A. I. R. 1933 Lah. 829 ... nder
s. 9 in fixing annual value of *houses* kept 'well' furnished but not used by assessee during year. 133 Ind. Cas. 33=10 Pat. 261=12 P. L. T. 502=A. I. R. 1931 Pat. 223. Deduction of collection charges can be allowed only if actually incurred and that too up to sum not exceding prescribed maximum. 133 Ind. Cas. 33=10 Pat. 261=12 Pat. 502. Deposit of title deeds does not create charge on property. A. I. R. 1932 All. 454 ; see also A. I. R. 1934 Mad. 670 (F. B.). The amount of interest due on a mortgage debt but not actually paid is an allowable item of expenditure under this section. 54 C. 630=31 C. W. N. 557. A loss incurred by a firm by standing surety for another firm is not loss incurred forming a deduction under the Act 92 Ind. Cas. 249=A. I. R. 1926 Lah. 168. If a man owns a house ready for his own occupation when he chooses to do so he is assessable under section 9 sub-section (1) (7) of the Indian Income-tax Act, though he may not live in it one day in a year. 49 M. 22=91 Ind. Cas. 940=A. I. R. 1926 Mad. 287 ; 22 L. W. 822. The 'annual value' of the property for purposes of s. 9 of the Income-tax Act does not include sums paid by tenants to the owner on amount of municipal house tax payable by the owner. 32 P. L. R. 517=A. I. R. (1931) Lah. 320 (F. B) ; but see 60 C. 357=36 C. W. N. 1144.

10. (1) The tax shall be payable by an assessee under the head "Business" in respect of the profits or gains of any business carried on by him.

Business.

(2) Such profits or gains shall be computed after making the following allowances, namely :—

(*i*) any rent paid for the premises in which such business is carried on,

amount shall be allowed ;

* Substituted by Act 18 of 1933.

(*iii*) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid ;

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause ;

(*iv*) in respect of insurance against risk of damages or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid ;

(*v*) in respect of current repairs to such buildings, machinery, plant or furniture, the amount paid on account thereof ;

(*vi*) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed :

Provided that—

(*a*) the prescribed particulars have been duly furnished ;

(*b*) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years ; and

(*c*) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original costs to the assessee of the buildings, machinery, plant, or furniture, as the case may be ;

(*vii*) in respect of any machinery or plant which, in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under Clause (*vi*) or any Act, repealed hereby, or the Indian Income-tax Act, 1886, and the amount for which the machinery or plant is actually sold, or its scrap value ;

"(*viia*) in respect of animals which have been used for the purposes of the business otherwise than as stock in trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses of animals ;"*

(*viii*) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business :

"(*viiia*) any sums paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission :

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

(*a*) the pay of the employee and the conditions of his service ;

(*b*) the profits of the business for the year in question : and

(*c*) the general practice in similar businesses"*

(*ix*) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains :

"Provided that nothing in clause (*viii*) or clause (*ix*) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax

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* Inserted by Act 23 of 1930.

levied on the profits or gains of any business or assessed at a proportion of or otherwise on the basis of any such profits or gains."*

(3) In subsection (2), the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains *are computed under this section.*

Notes.—Allowance should be made on account of the annual value of business premises owned and occupied by a firm. 43 A. 139. The precentage of profits earned by an Insurance Company and distributed among the participating policy-holders is not expenditure incurred for earning the profits of the company, but represent part of the profits assessable to income-tax. A. L. R. 1934 P. C. 53=A. I. R. 1934 P. C. 45=38 C. W. N. 375=39 L. W. 250.

Interest which accrues due to a money-lending firm in the year of account is not assessable under this section as profits of business unless it is received or realised in the year of account. 44 M. 65 (F. B); 39 M. L. J 649. One who is finally entitied to profits should be assessed with income-tax. A. I. R. 1934 Rang. 172=148 Ind. Cas 681. Initial payment made merely for the purpose of acquiring concern is in the nature of capital expenditure. A. I. R. 1934 Mad. 617=67 M. L. J. 350 (F. B)=1934 M. W. N. 840. In order to satisfy the requirements of the explanation to s. 10 (v) (iii), there must be recurring subscription paid periodically. "Recurring" means happening again and again not that which occurs only once. A. I. R. 1934 Mad. 653=67 M. L. J. 652. Interest must be realized or received in accounting
R. 1934 Lah. 408=152 Ind. Cas. 67=15 Lah 486=
of royalty allowed due prior to possession cannot
N. 59?=60 I. A. 146=A. I. R. 1933 P. C. 108
re cannot be allowed. A I. R 1933 Sind 145.
Ibid. Interest paid by employer on employee's
P. Fund is salary within s. 7. A. I. R. 1933 Rang. 45 (F. B)=11 Rang. 172. Assessee can deduct freight charges, etc, provided charges are shown in accounts. 135 Ind. Cas. 597=33 P. L. R. 526=33 P. L. R. 597=A. I. R. 1931 Lah. 759. If partner in firm works as employee his salary is to be deducted from profits of partnership business. 134 Ind. Cas. 198=32 P. L. R. 656=12 Lah. 663. Expenditure need not be made with view to produce profits in year of account. A. I. R. 1933 Cal. 777=60 C. 840=37 C. W. N. 430. Where assessee purchased mortgaged property he is not entitled to deduct expenses incurred for getting possession and mutation effected. A. I. R. 1933 P. C 181=37 P C. W. N. 570=60 I. A. 133 Tax-payer is entitled to appropriate payments as between capital and interest in a manner least disadvantageous to himself. A. I R. 1933 P. C 108 (P. C)=35 Bom. L. R. 731=1933 M. W. N. 439=60 I A. 146=12 Pat. 318. Money paid by company in lump sum as compensation for loss of agency to avoid future revenue expenditure as commission is not capital expenditure. 37 C. W. N. 430=60 C. 840=A. I. R. 1933 Cal. 777. Burden of proof of exemption is on assessee. 144 Ind. Cas. 422=64 M. L. J. 640=
W. N. 589=54 C. L. J. 550=58 C.

will be taxed. 58 C. 1153. Foreign
e taxed on income received in British
R. 1931 P. C. 165 (P. C.)=54 M.
periodical monetary return. A. I. R.
53=59 I. A. 206. Payment in kind
e. A. I. R. 1933 P. C. 108 (P. C.)
=35 Bom. L. R. 731=60 I. A. 146=37 C. W. N. 598. Where creditor receives promissory notes from his debtor, such promissory notes are not taxable income. *Ibid.* Business in s. 10 means business so carried on that taxable profit may ensue. A I. R. 1932 Bom. 94=56 B. 92=33 Bom. L. R. 1587. Guaranteed interest is also interest in capital borrowed. 56 M. 145=A. I. R. 1933 Mad. 347 (F. B); see also A. I. R. 1933 Sind 192. "Bad debt" can be deducted if it becomes bad in year of assessment. 35 C. W. N. 589=58 C. 1446=54 C. L. J. 550; see also 56 B. 457. "Bad debt" resulting from different transaction can not be set off against profits of money lending business. 58 C. 1446=35 C. W. N. 589=54 C. L. J. 550; but see 55 M. 818=62 M. L. J. 638=A. I. R. 1932 Mad. 375.

Deductions cannot be made under this section for commission paid to underwriters on the issue of new shares. 45 B. 1306. See also 48 C. 844; 48 C. 161;

* Inserted by Act 3 of 1928.

(1919) Pat. 377 ; 42 M. L. J. 7 ; 16 Ind. Cas. 685 ; 23 M. 477 (F. B.) ; 13 C. L. J. 148 ; 24 Bom. L. R. 119 ; 6 Pat. L. J. 61 ; 34 C. 257 ; 44 M. 257 ; 1 Bar L. J. 31 ; 34 C. 257 ; 42 M. L. J. 283.

Where money is remitted from abroad to the head quarters of a firm in British India, the natural inference would be that such remittances came out of profits rather than capital until the contrary is shown by the assessee. 97 Ind. Cas. 131 = A. I. R. 1026 Mad. 767. The owner of a rice mill factory is entitled to claim relief [illegible] s. 10 (2) (vi) even when the same is let out to a lessee at fixed rent and when the lease deed provided that the lessee was to do the necessary repairs to the mill. [illegible] M. L. J. 560 = 97 Ind. Cas. 820. In respect of a new motor car which met with an accident and having been broken to pieces had to be sold as scrap [illegible] the owner is not entitled to claim a deduction under s. 10 (2) (vii) of the Act. The general provisions in s. 10 (2) (vii) cannot be construed as extinguishing the right to deductions which are specifically outlined and defined in the other sub-section. 92 Ind. Cas. 1051 = 50 M. L. J. 157. Amounts paid by the Bank as contribution to the employee's provident fund is not "expenditure incurred solely for the purpose of earning profits" within the meaning of s. 10 (2) (ix) and is not permissible item of deduction [illegible] the employee withdraws the amount standing to his credit in the Provident Fund. It is not an expenditure but only a liability. 51 M. L. J. 403 (F. B.) = 1926 M. W. N. 740 = 24 L. W. 685 = A. I. R. 1926 Mad. 1018. No deduction could be allowed for depreciation in respect of securities purchased by a Bank not for the purpose of trading in them but for the purpose of retaining them permanently for use in emergency. 96 Ind. Cas. 380 = 1926 Lah. 373. Money embezzled by the clerk of the assessee is a deduction in computing the income or profits of the business, so also the boarding expenses of servants and their transit charges are items of deduction. 6 Pat. L. T. 166 = 86 Ind. Cas. 777. Profits arising from wagering contracts entered into the course of business are liable to income-tax. 23 A. L. J. 63 = 56 Ind. Cas. 95. [illegible] bad when it is barred by [illegible] "obsolete" means [illegible] [illegible] perform its functions. A. I. R. 1931 Cal. 599 (S. B.) = 58 C. 985 = 35 C. W. N. 314. Failure of partner to pay back loan is loss which assessee is entitled to claim credit for in assessing profit. A. I. R. 1933 Sind 148 = 27 S. L. R. 243 = 145 Ind. Cas. 254. "Original cost" mean genuine costs to assessee and not one paid by his predecessor. A. I. R. 1933 Pat. 28 = 13 P. L. T. 618 = 12 Pat. 12 = 140 Ind. Cas. 904. What is taxable is profit earned by process of production. A. I. R. 1932 P. C. 138 (P. C.) = 57 C. 1343 = 59 I. A. 206. The word "profits" is to be understood in its natural sense. 35 C. W. N. 895 = 58 I. A. 239 ; see also 32 P. L. R. 960 = 12 Lah. 704 = A. I. R. 1931 Lah. 739.

Section 10 (9) —Where 33 persons executed an agreement with the proprietor of a firm by which they were to have a certain share in the profits by the business when ascertained at the end of the two years during which it has to be in force, but there was no provision for liability in case of loss and the complete control of the business was retained by the proprietor who contributed the whole capital. *Held* that payment to the working partners out of the profits could not be deducted from the assessable income under s. 10 (9) but that it was not a partnership agreement and that the 33 persons were mere employees of the proprietor. 26 L. W. 659 = 1927 Mad. 1053.

Professional earnings.

11. (1) The tax shall be payable by an assessee under the head "professional earnings" in respect of the profits or gains of any profession or vocation followed by him.

(2) Such profits or gains shall be computed after making the following allowances, namely :—

"(*i*) any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation and not being personal expenses of the assessee ;

(*ii*) in respect of depreciation of buildings and depreciation and obsolescence of machinery, apparatus, appliances, plant, furniture or other capital assets being the property of the assessee and used solely for the purposes of such profession or vocation, the allowances specified in clauses (*vi*) and [illegible] of

of sub-section 2 of section 10 subject to all the conditions specified in those clauses."*

(3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head.

Notes.—Profession tax paid by a firm of attorney's practising in Madras under ... ct cannot be allowed as a deduction from ... incurred solely for the purposes of such ... f the Act, 92 Ind. Cas. 943=49 M. 296=24 L. W. 566. See also 43 M. 75.

Other sources.

12. (1) The tax shall be payable by an assessee under the head "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads).

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee :

Notes.—*Nimak Sair* is income from the settlement of the right to collect a particular kind of earth in a particular area during a particular season for the purpose of extracting saltpetre, Such income falls within the expression "income derived ... 359=A. I. R. ... , cesses paid ... n permissive ... the income. ... ties for pre- ... 14=A. I. R. ... exempt from income-tax. 137 Ind. Cas. 557=35 M. L. W. 777=62 M. L. J. 656=A. I. R. 1932 Mad. 424 (S. B). Annuities have not been expressly taxed except as salary and before an annuity can be taxed it must be shown to have come within the purview of "income" "property or gains" as mentioned in s. 12, Income-tax Act. A. I. R. 1934 Pat. 384. Money received from license, of land used for brick kilno and for removing earth is of nature of royalty and hence assessable. 10 Pat. 275=13 P. L. T. 14.

Method of accounting.

13. Income, profits and gains shall be computed, for the purposes of sections 10, 11, 12, in accordance with the method of accounting regularly employed by the assessee :

Provided that if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income tax Officer, the income, profits and gains cannot properly be deducted therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax office may determine.

... =A. I. R. 1926 Lah. 233. Proviso to ... nting has been regularly employed or ... opinion of the Income tax Officer, the ... leduced therefrom and not to a case ... o the genuineness of accounts. The

* Substituted by Act 18 of 1933.

section applicable in such cases is s. 23 (2)—94 Ind. Cas. 150=A. I. R. 1926 Lah. 201 Where Income-tax officer has assessed on his own method of computation such com-

All. 23=1930 A. L. J. 1548; see also A. I. R. 1932 Lah. 178=33 P. L. R. 10; 36 Bom. L. R. 818=A. I. R. 1934 Bom 378; A. I. R. 1934 Lah 43; A. I. R. 1934 Lah. 876; 32 P. L. R. 344=A. I. R. 1931 Lah. 432. But where mercantile system of accountancy has been employed by assessee, that system should be the basis of assessment. 36 P. L. R. 193.

Exemptions of a general nature.

14. *(1) The tax shall not be payable by an assessee in respect of any* sum which he receives as a member of a Hindu undivided family.

(2) The tax shall not be payable by an assessee in respect of—

(*a*) *any sum which he receives by way of dividend as a share-holder in a* company where the profits or gains of the company have been assessed to income-tax; or

(*b*) such an amount of the profits or gains of any firm which have been assessed to *income-tax as is proportionate* to his share in the firm "*at the time* of such *assessment*" * "or"

of an

any or

Notes—The sole object of sub-section (1) is to exempt from taxation in the hands of an individual that which has already been taxed in the hands of the joint family as such. If, however, the individual receives an income *aliunde* from property which has not been taxed as that of a Hindu joint family, then the provisions of

L. T. 301=A. I. R.

made out, namely

her that the sum is

818=149 Ind Cas.

57 M. 1023. Clause

534=58c. 1204.

Exemption in the case of life insurances.

15. (1) The tax shall not be payable by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife or in respect of a contract for a deferred annuity on his own life or on the life of his wife, or as a contribution to any Provident Fund to which the Provident Funds Act 1897‡ applies §

(2) Where the assessee *is a Hindu undivided family, there shall* be exempted under sub section (1) any sums paid to effect an insurance on the life of any *male member of the* family or of the wife of any such member.

(3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the proviso to sub-section (1) of section 7, "and any sums exempted under sub section (1) of section 58F."‖ *exceed one sixth of the total income* of the assessee.

Exemptions and exclusions in determining the total income.

16. (1) In computing the total income of an assessee sums exempted under the proviso to sub-section (1) of section 7, "the second and third provisos to section 8,"¶ sub section (2) of section 14 and section 15, *shall* be included.

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* Inserted by Act 3 of 1928.

† Inserted by Act 22 of 1930.

‡ 9 of 1897.

§ Certain words after this repealed by Act 2 of 1924 have been omitted.

‖ Inserted by Act XII of 1929.

¶ Substituted by Act 18 of 1933.

(2) For the purposes of sub-section (1) any sum mentioned in clause (a) of sub section (2) of section 14 shall be increased by the amount of income-tax payable by the company in respect of the dividend received.

Notes.—The total income for the purpose of this section means the total amount of income, profits or gains from all sources including (1) certain receipts on which an assessee is exempt from paying income-tax and (2) the amount of tax deducted at the source by companies when paying dividends 26 Bom. L. R. 366=81 Ind. Cas. 489. The scheme of the income-tax is that there is to be a statement of the total income of the assessee from which is to be deducted for the purpose of assessing income-tax, but not of super tax, nor for the purpose of any graduation of income-tax by reference to total income, the amounts of interest on tax-free securites and of dividends and shares of profits already taxed. A. I. R. 1934 P. C. 116=38 C. W. N. 618=58 B. 317=61 I. A. 209=36 Bom. L. R. 557.

Reduction of tax when margin above a certain limit is small.

17. Where owing to the fact that the total income of any assessee has reached or exceeded a certain limit, he is liable to pay income-tax or to pay income-tax at a higher rate, the amount of income-tax payable by him shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely :—

(a) the amount which would have been payable if his total income had been a sum less by one rupee than that limit, and

(b) the amount by which his total income exceeds that sum.

CHAPTER IV.

Deductions and Assessment.

18. (1) *(Omitted by Act 18 of 1933).*

(2) Any person responsible for paying any income chargeable under the head "salaries" shall, at the time of payment, deduct income tax "but not super-tax"* on the amount payable at the rate applicable to the estimated income of his assessee under this head :

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

† (2A). Notwithstanding anything hereinbefore contained, for the purpose of making the deduction under sub section 2, there shall be included in the amount payable any income chargeable under the head "salaries" which is payable to the assessee out of India by or in behalf of Government and the value in rupees of such income shall be calculated at the prescibed, rate of exchange.

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall "unless otherwise prescribed in the case of any security of the Government of India"* at the time of payment, deduct income-tax "but not super-tax"* on the amount of the interest payable at the maximum rate.

"Provi

(which ce

assessee)

less than t

come tax less than the maximum rate, the person responsible for paying any income herein referred to to such recipient shall, until such certificate is ceancelled by the Income-tax officer, pay the income without deduction or deduct the tax at such less rate, as the case may be."*

* Inserted by Act 18 of 1933. † Inserted by Act XVI of 1925.

"(3A) Where the Income-tax officer has reason to believe that the total income of any person residing out of British India to whom any interest not being 'Interest on Securities' is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person responsible for paying such interest to such person to deduct at the time of payment income-tax and super-tax at the rates determined by the income-tax officer to be applicable to the total income of such person in that year.

"(3B) Where the person responsible for paying any interest not being 'Interest on Securities' to any person pays to that person in any year an
maximum amount which
time being in force, the
has not reason to believe
that the recipient is resident in British India, and no order under sub section (3A) has been received in respect of such recipient, deduct at the time of payment income-tax on the total amount of such interest at the rate appropriate to such total, and super-tax on the amount by which such total exceeds the maxi-
rate applicable to such excess.
son to believe that any person
out of British India and that
the total income of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the Company to deduct at the time of payment of any dividend from the Company to the shareholder in that year super-tax at such rate as the Income tax Officer may determine as being the rate applicable in respect of the income of the share holder in that year.

"(3D) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any share holder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable
e, and the principal officer
share-holder is resident in
as been received in respect
the Income-tax officer, the
principal officer shall at the time of payment deduct super-tax on the amount
he law for the
(together with
le total income
of the share-holder."*

(4) *All sums deducted in accordance with the provisions of this section* shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax "or super-tax"* on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act:

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit

e provisions of this section shall
making the deduction to the
credit of the Government of India, or as the "Central Board of Revenue"† directs.

* Inserted by Act 18 of 1933.

† The words within quotations have been substituted by Act 4 of 1934.

(7) If any such person does not deduct and pay the tax as required by "or under"* this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be "an assessee"† in default in respect of the tax:

Provided that the Income-tax Officer shall not make a direction under sub section (1) of section 46 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(9) Every person deducting income-tax "or super-tax"* in accordance with the provisions of "sub section (3), (3A), (3B), (3C), or (3D)"* shall, at the time of payment of interest, "or dividends"‡ furnish to the person to whom "such payment is made"§ a certif [illegible] has been deducted, and [illegible] the tax has been deducted, [illegible]

Notes—The deduction of income-tax from salaries under this section at the time of the payment of t [illegible] income for the year of [illegible] payment was made [illegible] management, deduction of such amount is not permissible. 60 C. 840=A. I. R. 1933 Cal 777=37 C W N. 430 Interest paid by employer on Provident Fund contribution is salary within s. 7. A I. R. 1933 Rang 45 (F. B).

Payment in other cases.

19. In the case of income chargeable under "any heads other than 'salaries' or 'interest on securities'"* and in any case where income tax has not been deducted in accordance with the provisions of "section 18"‖ the tax shall be payable by the assessee direct.

Supply of information regarding dividends

"**19A.**¶ The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses as entered in the register of share holders maintained by the company, of the share-holders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such share holder"

Certificate by company to shareholders receiving dividends

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

Supply of information regarding interes

20A.* The person responsible for paying any 'interest not being interest on securities' shall, on or before the fifteenth [illegible] furnish to the pres- [illegible] and verified [illegible]

* Inserted by Act 18 of 1933.
† Substituted by Act 18 of 1933.
‡ Inserted by Act XII of 1935
§ Substituted by Act XII of 1935.
‖ Substituted by Act XXIV of 1934.
¶ Inserted by Act 24 of 1926.

21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer, shall prepare, and within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, a return in writing showing—

Annual return.

(*a*) the name, and so far as it is known, the address, of every person who was receiving on the said 31 st day of March, or has received during the years ending on that date, from the authority, company, body, association or private employer as the case may be, any income chargeable under the head "salaries" of such amount as may be prescribed ;

(*b*) the amount of the income so received by each such person, and the time or times at which the same was paid ;

(*c*) the amount deducted in respect of income tax from the income of each such person

22 (1) The principal officer of every company shall prepare, and, on or before the fifteenth day of June in each year, furnish to the Income tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year :

Return of income

Provided that the Income tax Officer may, in his discretion, extend the date for the delivery of the return in the case of any company or class of companies.

(2) In the case of any person other than a company whose total income is, in the Income tax Officer's opinion, of such an amount as to render such person liable to income tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year.

(3) If any person has not furnished a return within the time allowed by or under sub section (1) or sub section (2) or having furnished a return under either of those sub sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under this section.

(4) The Income-tax Officer may serve on the principal officer of any company or on any person upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income tax Officer may require :

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

Notes—An Income-tax Officer should be governed in his procedure by judicial considerations He should base assessment on legal and not mere hearsay evidence, which may be the evidence of his officers or of members of the public. 94 Ind. Cas. 156=A. I R. 1926 Lah. 233. Personal service of notice is not necessary. Service on recognised agent is sufficient. 13 P L. T. 8 =10 Pat. 441=A I. R. 1931 Pat. 282 ; 54 A 548. Whether time given is reasonable is question of fac[illegible] . I. R. 1931 Cal. 729 (S [illegible] d al-though out of time. [illegible] A. I. R. 1931 Cal. 729. [illegible] A. I. R. 1934 All 930=50 A. 418=1934 A. L. J. 47 ; see also A I R. 1934 All 929 When an assessee in a verified return under s 22 (2) declared that he had no income from a particular source, if the authorities disbelieve it, the onus is on them to prove that there was income from that source and what it was. 50 C. 907.

Sub Clause (4)—This sub-clause is very wide and gives the Income-tax Officer very wide powers. Where profits were received at Rawalpindi from business in Kashmir, the Income-tax Officer at Rawalpindi is competent to ask the assessee to produce account books relating to Kashmir business. 101 Ind. Cas. 321=A. I. R. 1927 Lah. 5. Accounts or documents can be called for by the Income-tax Officer under this sub-clause after issue of notice and before the filing of the return. 8 P. L. T. 686=A. I. R. 1927 Pat. 390; see also A. I. R 1934 Nag. 183; A. I R 1932 Cal. 411; A. I. R. 1933 All 541. An Income-tax Officer is empowered under s. 22 (4) to serve the proprietors of a firm with notice to produce their accounts but there is no provision in the Act by which he could enforce production. If they decline to comply with the notice, he can only act under s. 23 (4). 95 Ind. Cas. 308=7 Lah. 104=27 Punj. L. R. 298. The order of assessment is illegal, when the assessee has substantially complied with the notice sent under clause 4 by the production of his accounts and when he received no opportunity under s. 23 clause (2) to appear and meet the objections to the return and accounts produced by him. 8. L. L. J. 106=94 Ind. Cas. 614. The word 'require" means required as piece of relevant evidence. 1931 A. L J 345=53 A 451=A. I. R. 1931 All. 417.

23. (1) If the Income-tax Officer is satisfied that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

Assessment.

(2) If the Income tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete, he shall serve on the person who made the return a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) If the principal officer of any company or any other person fails to make a return under sub-section (1) or sub section (2) of section 22, as the case may be, or fails to comply with all the terms of the notice issued under sub section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub section (2) of this section, the Income tax Officer shall make the assessment to the best of his judgment "and in the case of a registered firm may cancel its registration."*

"Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration."*

Notes—After [illegible] ample powers to [illegible] 8 P. L. T. 686=A [illegible] are of a judicial [illegible] produced by the [illegible] rebutted by other admissible evidence and not by hearsay evidence. 94 Ind. Cas. 614=A. I R. 1926 Lah. 161 Assessment can be made even after the expiry of tax year. 61 I. R. 10=61 C 285=38 C. W N. 319=A I. R. 1934 P C. 30. Plea of division of shares of joint family must be raised at the time of assessment under [illegible] 217. Where notice issued is illegal, return does [illegible] partnership firm for registration is within time. [illegible] is 290 Assessee can dispute Taxing Officer's [illegible] I. A. 146=37 C. W. N. 598=A. I. R. 1913 P. C. 108. Section has no application when non-compliance with rules in s 22 (2) is deliberate. A. I. R. 1933 All. 197=1933 A. L. J. 40=145 Ind Cas. 562. Income-tax Officer should be guided by principles of justice, equity and good conscience in the

* Inserted by Act XXI of 1930.

matter of assessment. A. I. R. 1933 Oudh 396; see also 12 Lah. 129=A. I. R. 1931 Lah. 87 (F. B.); A. I. R. 1931 All. 23.

Clause (4). The failure to comply with any of the notices under clauses 2, 3 and section 37 does not authorise the Income-tax Officer to make a summary assessment to the best of his judgment under this clause. 8 P. L. T 686=A. I. R. 1927 [illegible] ant Commissioner to *satisfy himself that the* [illegible] in order and the mere fact that he professes [illegible] be enough to prevent the Assistant Commiss- [illegible] Income-tax Officer's claim was correct,—101 Ind. Cas. 321=A. I. R. 1927 Lah. 5 Where [illegible] proper return. A. I. R. 1934 All. 930=56 A. 41 [illegible] the Income-tax Officer must make local inqui [illegible] A. I. R. 1934 All. 930=56 A 418. Whether a [illegible] not is a question of law. A. I. R. 1934 All [illegible] tion of registration more than a year after the order is not legal 28 S. L. R 174=A. I. R. 1934 Sind 46 In a proper case adjournment should be given. A. I. R. 1934 Nag. 183 Assistant Commissioner should not dismiss appeal *exparte*. 51 A. 496.

Power to assess individual members of certain *firms*, association and companies

***"23A.** (1) Where the Income tax Officer is satisfied that any firm or other association of individuals carrying on any business, other than a Hindu undivided family or a company, is under the control of one member thereof, and that such firm or association has been formed or is being used for the purpose of evading or reducing the liability to tax of any member thereof, he may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the firm or association shall not be determined, and thereupon the share of each member in the profits and *gains of the* firm or association shall be included in his total income for the purpose of his assessment thereon.

Explanation.—A member of a firm or association who owns the whole or the major portion of the capital of the firm or association shall not by reason only of that fact be deemed to control the firm or association.

(2) Where the Income-tax Officer is satisfied that a company is under *the control of not more than five of its members and that its* profits and gains are allowed to accumulate beyond its reasonable needs existing and contingent, having regard to the maintenance and development of its business, without being distributed to the members, or that a reasonable part of its profits and gains, having regard to the said needs, has not been distributed to its members in such manner as to render the amount distributed liable to be included in their total income, and that such accumulation or failure *to distribute is for the purpose of preventing the imposition* of tax upon any of the members in respect of their shares in the profits and gains so accumulated or not distributed, the Income-tax Officer may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the company shall not be determined, and thereupon the proportionate share of each member in the profits and gains of the company, whether such profits and gains have been distributed to the members or not, shall be included in the total income of such member for the purpose of his assessment thereon:

Provided that this sub-section shall not apply to any company which is a subsidiary company or in which the public are substantially interested.

Explanation.—For the purpose of this sub section,—

(*a*) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in *the hands of a company* not being a company to which the provisions of this sub section apply or of two or more companies none of which is a company to which those provisions apply;

* Inserted by Act XXI of 1930.

charged had such income been fully assessed, and for the period from the expiry of the last of such previous years to the probable date of departure, the Income-tax Officer shall estimate the total income of such person and assess it at the rate in force for the financial year in which such assessment is made :

Provided that nothing herein contained shall authorise an income-tax Officer to assess any income, profits or gains which have escaped assessment or have been assessed at too low a rate in respect of which he is debarred from issuing a notice under section 34.

(2) For the purpose of making an assessment under sub-section (1), the Income-tax Officer may serve a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub section (2) of section 22, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years comprised in the period first referred to in sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure ; and the provisions of the Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2), section 22.

Tax of deceased person payable by representative.

"24B. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which could have been

d with a notice under sub-
ase may be, the Income-tax
other legal representative a
section 34, as the case may be, and may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of sub-section 2 of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person."*

Assessment in case of discontinued business.

25. (1) Where any business, profession or vocation "on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act 1918"† is discon-

assessment, if any, made on the basis of the income, profits or gains of the previous year.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on

* Inserted by Act 18 of 1933.

† The words within quotations have been substituted by Act 11 of 1924.

him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

(3) Where any business, profession or vocation* on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918,† is discontinued no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, and assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(4) Where an assessment is to be made under sub-section (1) or sub-section (3) the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act, shall so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

Notes—Where a company which was carrying on a business went into voluntary liquidation the liquidators transferred the business to a new company which continued the business. *Held*, that this was not a case of "discontinuance" of the business so as to attract the provisions of section 25 clause 3 and was usually governed by section 26. 27 Bom. L. R. 1471.

Assessment after partition of a Hindu undivided family.

‡"25A. (1) Where, at the time of making an assessment under section 23 it is claimed by or on behalf of any member of a Hindu family hitherto "assessed as" § undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such enquiry thereinto as he may think fit, and if he is satisfied that a separation of the members of the family has taken place and that the joint family property has been partitioned among the various members or groups of members in definite portions ‖ he shall record an order to that effect:

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no separation or partition has taken place, and each member or group of members shall in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it;

and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23:

Provided that all the separated members and groups of members shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.

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* Certain words after this repealed by Act 11 of 1924 have been omitted.
† VII of 1918.
‡ Inserted by Act 3 of 1928.
§ Inserted by Act 22 of 1930.
‖ Certain words after this repealed by Act XXII of 1930 have

"(3) Where such an order has not been passed in respect of a family hitherto assessed as undivided, such family shall be deemed, fo purposes of this Act, to continue to be a Hindu undivided family."*

Notes.—A transfer of business from one person to another is governed section. 27 Bom. L. R. 1471. A successor is bound to pay in respect of th decessor any tax which the predecessor would have been liable to pay. 47 A. 7 A. L. J. 685=L. R. 6 A. 333=88 Ind. Cas. 239. This section has no applica case of partial partition. But partition need not be by mates and bounds. 56 A. A. I. R. 1934 All. 217 ; but see A. I. R. 1933 Lah. 952 ; A. I. R. 1934 Lah Income-tax Officer can decide question as to dissolution or existence of joint A. I. R. 1933 Lah 827 ; see also 14 Lah. 134=A. I. R. 1932 Lah. 575=33 P. 947. Income-tax Officer accepting allegation of assessee as to partition in on is not barred from considering question of partition in subsequent year. A 1933 Lah. 815

Change in the constitution of a firm.

"26 † (1) Where, at the time of making an assessment under sectic it is found that a change has occurred in constitution of a firm or that a firm has newly constituted, the assessments on the and on the members thereof shall, subject to the provisions of this A made as if the firm had been constituted throughout the previous ye it is constituted at the time of making the assessment, and as if each me had received a share of the profits of that year proportionate to his int in the firm at the time of making the assessment.

Change of ownership of business.

(2) Where, at the time of making an assessment under section 23, found that the person carrying on any busi profession or vocation has been succeede such capacity by another person, the assess shall be made on such person succeeding, as if he had been carrying on business, profession or vocation throughout the previous year, and as if he received the whole of the profits for that year."

Notes.—Where any change occurs in the constitution of a firm, for exa where a registered firm succeeds to the business of an undivided Hindu fami in this case, the assessment should be made on the firm as constituted at the

cial nature. 27 S. L. R. 47=A. I. R. 1932 Sind 189.

Procedure in registration of firms

‡"26A. (1) Application may be made to the Income-tax Officer on bel of any firm, constituted under an instrumen partnership specifying the individual shares the partners, for registration for the purpose this Act and of any other enactment for the time being in force relating income-tax or super-tax.

(2) The application shall be made by such person or persons, and at su times and shall contain such particulars and shall be in such form, and verified in such manner, as may be prescribed ; and it shall be dealt with the Income-tax Officer in such manner as may be prescribed."

Notes.—"We consider that the definite provision which the Bill is to make procedure in the matter of registration of firm would be more suitably inserted the Income-tax Act as section 26 A rather than section 39 A. As regards the subje

* Inserted by Act 22 of 1930. † Substituted by Act 3 of 1928.
‡ Inserted by Act 21 of 1930.

matter of the new section we have considered very carefully the provision originally made in sub-section (3) allowing an Income-tax Officer to refuse registration to any association of individuals which is in his opinion not a firm. We think, in the first place, that such a provision is unnecessary in view of the provisions of sub-section (1) of the new section 23 A which gives power to the income-tax authorities to treat the members of a firm as individuals, ignoring the constitution of the firm as such, and of his undoubted power under the Act as it now stands to refuse registration to a concern which on the face of the deed of partnership is not a firm as defined in the Act. In addition to this we observe that there is undoubtedly a large body of opinion which holds that the sub-section would place in the hands of the Income-tax Officers a power which, although it might not in actual practice be abused is liable to be misconceived and thus to hamper and discourage the formation of perfectly genuine partnership for business purposes At the same time we realise that it should not be possible for persons to obtain registration of an enterprise as a registered firm which is in fact nothing more than an one man concern and we think the object in view can be satisfactorily made by making provision for the verification of an application for registration and by imposing an amendment of section 52 of the Act a penalty upon any one who makes a false verification. The result is a small amendment in sub-section (2) of the new section 26 A and of section 52 of the Act, and the omission of sub-section (3) of the new section."—*Report of the Select Committee*

Cancellation of assessmnet when cause is shown.

27 Where an asessee, or, in the case of a company, the principal officer thereof, within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not recieve the notice issued under sub section (4) of section 22, or sub section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

Notes.—*Vide* 1921 M. W. N. 784 ; 20 L. W. 395 ; A. I. R. 1931 Rang. 97 ; A. I. R 1931 Rang. 194, A I R 1933 Oudh 396 ; A. I. R. 1932 Pat. 166 ; A I. R. 1934 Nag 183.

Penalty for concealment of income or improper distribution of profits.

*"28. (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income.

(2) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partr [illegible] has thereby returned his income below its real amount he r [illegible] such partner shall, in addition to the income-tax payable [illegible] the amount of incom [illegible] come

* Inserted by Act XXI of 1931.

"(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family."*

Notes—A transfer of business from one person to another is governed by this section. 27 Bom. L. R. 1471. A successor is bound to pay in respect of the predecessor any tax which the predecessor would have been liable to pay. 47 A. 715=23 A. L. J. 685=L. R 6 A. 333=88 Ind. Cas. 239. This section has no application in case of partial partition. But partition need not be by mates and bounds 56 A. 504=. A. I. R. 1934 All. 217; but see A. I. R. 1933 Lah. 952; A. I. R. 1934 Lah. 942. Income-tax Officer can decide question as to dissolution or existence of joint family. A. I. R. 1933 Lab. 827; see also 14 Lah. 134=A. I. R. 1932 Lah. 575=33 P. L. R. 947. Income-tax Officer accepting allegation of assessee as to partition in one year is not barred from considering question of partition in subsequent year. A. I. R. 1933 Lah. 815

Change in the constitution of a firm.

"26 † (1) Where, at the time of making an assessment under section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessments on the firm and on the members thereof shall, subject to the provisions of this Act, be made as if the firm had been constituted throughout the previous year as it is constituted at the time of making the assessment, and as if each member had received a share of the profits of that year proportionate to his interest in the firm at the time of making the assessment.

Change of ownership of business.

(2) Where, at the time of making an assessment under section 23, it is found that the person carrying on any business, profession or vocation has been succeeded in such capacity by another person, the assessment shall be made on such person succeeding, as if he had been carrying on the business, profession or vocation throughout the previous year, and as if he had received the whole of the profits for that year."

Notes.—Where any change occurs in the [illegible] where a registered firm succeeds to the busines[illegible] in this case, the assessment should be made on t[illegible]

[illegible] cial nature. 27 S L. R. 47=A. I. R. 1932 Sind 189.

Procedure in registration of firms

‡"26A. (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

Notes.—"We consider that the definite provision which the Bill is to make for procedure in the matter of registration of firm would be more suitably inserted in the Income-tax Act as section 26 A rather than section 39 A. As regards the subject-

* Inserted by Act 22 of 1930. † Substituted by Act 3 of 1928.
‡ Inserted by Act 21 of 1930.

matter of the new section we have considered very carefully the provision originally made in sub-section (3) allowing an Income-tax Officer to refuse registration to any association of individuals which is in his opinion not a firm. We think, in the first place, that such a provision is unnecessary in view of the provisions of sub-section (1) of the new section 23 A which gives power to the income-tax authorities to treat the members of a firm as individuals, ignoring the constitution of the firm as such, and of his undoubted power under the Act as it now stands to refuse registration to a concern which on the face of the deed of partnership is not a firm as defined in the Act. In addition to this we observe that there is undoubtedly a large body of opinion which holds that the sub-section would place in the hands of the Income-tax Officers a power which, although it might not in actual practice be abused is liable to be misconceived and thus to hamper and discourage the formation of perfectly genuine partnership for business purposes. At the same time we realise that it should not be possible for persons to obtain registration of an enterprise as a registered firm which is in fact nothing more than an one man concern and we think the object in view can be satisfactorily made by making provision for the verification of an application for registration and by imposing an amendment of section 52 of the Act a penalty upon any one who makes a false verification. The result is a small amendment in sub-section (2) of the new section 26 A and of section 52 of the Act; and the omission of sub-section (3) of the new section"—*Report of the Select Committee.*

27. Where an assessee, or, in the case of a company, the principal officer thereof, within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not recieve the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

Cancellation of assessment when cause is shown.

Notes.—*Vide* 1921 M. W. N. 784; 20 L. W. 395; A. I. R. 1931 Rang. 97; A. I. R. 1931 Rang 194, A. I. R. 1933 Oudh 396; A. I. R. 1932 Pat. 166; A. I. R. 1934 Nag 183.

*"28. (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income.

Penalty for concealment of income or improper distribution of profits.

(2) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount he may direct that such partner shall, in addition to the income-tax payable by him, pay [illegible] ...me-tax which [illegible] returned by [illegible] d or other [illegible] direction.

* Inserted by Act XXI of 1931.

(3) No order shall be made under sub section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(5) An Assistant Commissioner or a Commissioner, who has made an order under sub section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer".

Notes.—"We have agreed to this clause with one small drafting amendment :—*Report of the Select Committee.* Penal assessment under this section can be made on the ground that the assessee has made a false return but, it cannot be made a ground of non-production of accounts books. The second proviso to this section is intended to bar a prosecution under section 52 and not one under section 51 (d) of the Act. 43 M. 498. A commissioner acting in revision under s. 33 can levy penalty. 1928 M. 257. Income-tax Officer can impose penalty in proceedings under s. 34 131 Ind. Cas. 875=53A 445=A. I. R. 1931 All 421. No penalty can be imposed in matter of super-tax. 53A. 445. Evidence as to actual income cannot be refused by Income-tax Officer. A. I. R. 1933 Rang. 30=11 Rang. 75. Assistant Commissiner cannot enhance penalty on appeal. 53A. 679=A. I. R. 1931 All. 401. Where assessee deliberately submits incorrect return Income-tax Officer is justified in imposing penalty. 63 M. L. J. 236=A. I. R. 1932 Mad. 433. See also 12 Rang. 268=A. I. R. 1934 Rang. 95; A. I. R. 1934 Rang. 354.

Notice of demand.

29. When the Income-tax Officer has determined a sum to be payable by an assessee under section 23, or when an order has been passed under sub-section (2) of section 25 or section 28 for the payment of a penalty, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

Notes.—Under this section, no period within which a notice demanding income tax is to be issued is prescribed and therefore *prima facie* a notice issued about 14 months after the expiration of the year of assessment would not necessarily be too late. A. I. R. 1935 Pat. 581. This section does not prohibit a suit for declaration that an assessment is *ultra vires*. 27 Bom. L. R. 1507. Mistaken notice does not prevent proper notice to be sent to assessee. A. I. R. 1932 Cal. 410 ; see also A. I. R. 1934 All 930=56 A. 418.

Appeal against assessment under this Act.

30. (1) Any assessee objecting to the amount or rate at which he is assessed under section 23, or section 27, or denying his liability to be assessed under this Act or objecting to a refusal of an Income-tax Officer "to register a firm under section 26A or"* to make a fresh assessment under section 27, or to any order against him under sub section (2) of section 25 "or section 25A"† or section 28, made by an Income tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal or order:

Provided that no appeal shall lie in respect of an assessment made under sub section (4) of section 23 or under that sub section read with section 27.

(2) The appeal shall ordinarily be presented within thirty days of receipt [illegible] cted to, [illegible]),"* or [illegible], as the case may be, but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

* Inserted by Act 18 of 1933.

† Inserted by Act 22 of 1930 and clause (c) has been re-numbered clause (d).

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

[illegible] petitioner and [illegible] Cas. 774= 1927 [illegible] at there is nothing to prevent authorities from entertaining an appeal preferred after the expiration of 30 days. 31 C. W. N. 630=103 Ind. Cas. 120 (2)=A. I. R. 1927 Cal. 518. Where the assessee has submitted an estimate of his income and the case fell within s. 23 (3) and not s. 23 (4) the appellate authorities had jurisdiction to levy the fine in as much as the appeal was valid 49 M. 831=24 L. W. 771; see also A. I. R. 1934 Sind 46; A. I. R. 1931 Pat. 306; 12 Lah. 714.

31. (1) The Assistant Commissioner shall fix a day and place for the [illegible] time to [illegible]

Hearing of appeal

(2) The Assistant Comm[illegible], make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(3) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,—

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon to make such fresh assessment,

"or, in the case of an order refusing 'to register a firm under section 26A or'* to make a fresh assessment under section, 27."†

(c) confirm such order, or cancel it and direct the Income-tax officer "to register the firm or to make a fresh assessment, as the case may be."‡

or, in the case of an order under sub section (2) of section 25, or section 28,

(d) confirm, concel or vary such order:

Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

Notes—An appeal is to be limited to subject-matter of assessment. 86 Ind. Cas. 777=4 Pat. 385=6 Pat. L. T. 166=A. I. R. 1925 Pat. 408. Assessee can claim reference under s. 66 (2) in respect of question of law arising from order passed under s. 31 or s. 32. A. I. R. 1932 Sind 189=27 S. L. R. 47; see also 11 Pat. 187=A. I. R. 1931 Pat. 306; A. I. R. 1934 Sind 46=28 S. L. R. 174. Where Assistant Commissioner does not enhance total assessment but increases it on some items and reduce it on others, no appeal lies. A. I. R. 1933 Mad. 1=56 M. 329=63 M. L. J. 805=140 Ind. Cas. 850. Assistant Commissioner can examine record to satisfy whether real appeal lay. A. I. R. 1933 All. 541.

Appeals against orders of Assistant Commissioner.

32. (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31, may appeal to the Commissioner within thirty days of "the date on which he was served with notice of such order."‡

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

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* Inserted by Act 18 of 1933.
† Inserted by Act 22 of 1930 and clause (c) has been re-numbered clause (d).
‡ Substituted by Act 18 of 1933.

endeavour to obtain a decision in his favour from the Commissioner acting under his powers of revision and thus obviate the delay and possible inconvenience of a reference to a Board."—*Report of the Select Committee.*

Income escaping assessment.

34. If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year, or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub section :

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be.

Notes.—The service within one year of a proper notice on the assessee giving ... ie-tax Officer to reassess is a ... s. 34 of the Act. Re-assessment ... f the Act before a penalty is im- ... in this sense that section 34 controls section 28. 1927 M. W. N. 611 (F. B.) Whatever may be the reason for

1 ; See also 35 C. W. N. 534 ; 35 C. W. N. 310. Successor in business is liable in case of escaped assessment. A. I. R. 1934 Mad. 63=66 M. L. J. 17. (F. B.)=57 M. 357 ; As regards notice under this section, *Vide* 38 C. W. N. 204=61 c. 132 ; 57 M. 357 ; 34 C. W. N. 1093.

Rectification of mistake.

35. (1) "The Commissioner or Assistant Commissioner may, at any time within one year from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under the section 33 and"* the Income-tax Officer may, at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record "of the appeal, revision or assessment, as the case may be"† and shall within the like period rectify any such mistake which has been brought to his notice by the assessee"† :

Provided that no such rectification shall be made, having the effect of enhancing an assessment unless "the Commissioner, the Assistant Commissioner or the Income-tax Officer, as the case may be,"† has given notice to the assessee of his intention so to do and has allowed him a resonable

... reducing the assessment, ... y be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Income tax Officer shall serve on the assessee a notice of demand

* Inserted by Act 3 of 1928. † Substituted by Act 3 of 1928.

in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.

Notes.—The rectification of a mistake which has the effect of enhancing the assessment cannot be made after the expiry of one year from the date of the demand by the assessee. 101 Ind. Cas 139 = A. I. R. 1927 Lah 431. Assessment was made on the basis of returns of 5 concerns submitted in the names of 5 different persons. Later on it transpired that all the 5 concerns belonged to the applicant who was then served with notice to show cause against enhanced assessment. The applicant cannot claim assessment collectively on those 5 and one more which was in great loss. 4 Pat 224 = 86 Ind Cas. 170.

Tax to be calculated to nearest anna.

36. In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded; and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

Power to take evidence on oath, etc.

37. The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses; and any proceeding before an Income-tax Officer, Assistant Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 *and for the purposes of section 196* of the Indian Penal Code.

Notes.—This section being a penal section has to be construed strictly. Thus proceeding before Income-tax Officer, Assistant Commissioner or Commissioner are judicial proceedings for the purpose of sustaining convictions under ss. 193 and 228 I. P. C. and no other. 31 C. W. N. [illegible] = A. I. R. 1927 Cal. 724.

Power to call for information.

38. The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

(1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;

(2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses;

†"(3) require any person whom he has reason to believe to be engaged in business, to furnish him with a return containing particulars of the business and the style of his principal place of business, and of his branch businesses, if any, the names and addresses of his partners in any business and the extent of his own share and the shares of all such partners in the profits of such business or businesses."

Power to inspect the register of members of any company.

39. The Income-tax Officer or Assistant Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

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* Inserted by Act [illegible] of [illegible] † Inserted by Act [illegible] of [illegible]

CHAPTER V.

LIABILIY IN SPECIAL CASES.

Guardians, trustees and agents.

40. In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term [illegible] behalf of such beneficiary of any income, [illegible] this Act, the tax shall be levied upon and [illegible], trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

Notes.— [illegible] W. N. 138. Section 40 is [illegible] . J. 600=55 M. 891=35 M [illegible]. Trustees may be assessed in unusual cases other than those covered by the section. 33 Bom. L. R. 1549=A. I. R. 1932 Bom. 106; see also 61 I. A. 209=58 B. 317=A. I. R. 1934 P. C. 116=38 C. W. N. 618.

Courts of Wards, etc.

41. In the case of income, profits or gains chargeable under this Act which are received by the Courts of Wards, the Administrators-General, the Official Trustees or by any Receiver or Manager, (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, Receiver or Manager in the like manner and to the same amount as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly.

Non-residents.

42. (1) In the case of any person residing out of British India, all profits or gains accruing or arising, to such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax:

Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within British India.

(2) Where a person not resident in British India, and not being a British subject or a firm or company constituted within His Majesty's dominions or a branch thereof, carries on business with a person resident in British India, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that owing to the close connection between the resident and the non resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

"(3) Where any profits or gains have accrued or arisen to any person directly or indirectly from the sale in British India by him or by any agency

or branch on his behalf of any merchandise imported to British India by him or any agency or branch on his behalf from any place outside British India, the profits or gains shall be deemed to have accrued and arisen and to have been received in British India, and no allowance shall be made under sub-section (2) of section 10 in respect of any buying or other commission whatsoever not actually paid, or of any other amounts not actually spent, for the purpose of earning such profits or gains."*

Notes—Where non-resident foreigner derives benefit by his business in British India, the profits and gains made by him are profits and gains from his business in British India and he is assessable under this section The latter part of the section lays down only the mode [illegible] not be got from the non-resident member himself [illegible] something tangible and not merely a choose in [illegible] =35 Bom L. R. 914. Person coming within s 43 is [illegible] and assessee under s. 42 (1). 55 B 243=58 I A. 42=A. I R. 1931 P. C 42 (P C) Non-resident is liable to tax for source of income 57 B 519=A. I. R 1933 Bom 427. Principal could be assessed without appointment of agent *Ibid.* Definition of business is not exhaustive. *Ibid*; see also 35 Bom L. R 914=A. I. R 1933 Bom. 422; 36 C. W. N 563=59 C 1226

43 Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent:

Agents to include persons treated as such

Provided that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

44. Where any business, profession or vocation carried on by a firm has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and severally liable for the amount of the tax payable in respect of the income, profits and gains of the firm.

Liability in case of a discontinued firm or partnership.

"CHAPTR VA."†

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

44A. The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

Liability to tax of occasional shipping

44B. (1) Before the deparature from any port in British India of any ship in respect of which the provisions of this Chapter apply, the Master of the ship shall prepare and furnish to the Income-tax officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

Return of profits and gains.

* Inserted by Act 3 of 1928.
† Chapter VA has been inserted by Act 27 of 1923.

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship and a port-clearance shall not be granted to the ship until the Customs collector or other officer duly authorise to grant the same is satisfied that the tax has been duly paid.

Adjustment.

44C. *Nothing in this Chapter shall be deemed to prevent a principal* from claiming, in any year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him as the case may be,"

CHAPTER VI.

RECOVERY OF TAX AND PENALTIES.

Tax when payable.

45. Any amount specified as payable in a notice of demand "under sub-section (4) of section 23 A or"* under section 29 or an order under section 31 or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30, "or under section 33A"* the Income tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

Mode and time of recovery.

46. (1) *When an assessee is in default in making a payment of income-*tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee *by way of penalty*.

"(1A) For the purposes of sub-section (1) the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable."†

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector on receipt of such certificate shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue:

"Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment-debtor for the purpose of the recovery of an amount due under a decree."‡

* Inserted by Act 21 of 1930. † Inserted by Act 3 of 1928.
‡ Inserted by Act 18 of 1933.

(3) In any area, with respect to which the Commissioner has directed that any arrears may be recovered by *any process enforceable for the recovery of* an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub section (3).

(5) If any assessee is in receipt of any income chargeable under the head "Salaries" the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sums so deducted to the credit of the Government of India, or as the "Central Board of Revenue"* directs.

(6) *The Local Government may direct, with respect to any specified* area, that income-tax shall be recovered therein, with and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of sub section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act.

Notes—*Vide* 7 M. 434; 41 M 691; 26 M. 230.

Recovery of penalties.

47. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28 or sub-section (1) of section 46, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

CHAPTER VII.

REFUNDS.

Refunds.

48. (1) If a shareholder in a company who has received any dividend therefrom satisfied the Income-tax Officer "or other authority appointed by the Governor-General in Council in this behalf"* that the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividend is greater than the rate applicable to his total income of the year in which such dividend was declared "or that his total income in such year is below the minimum chargeable with income tax"† he shall, on production of the certificate received by him under the provisions of section 20, be entitled to a refund on the amount of such dividend (including the amount of the tax thereon) calculated at the difference between those rates "or at the [illegible] company at the time of the [illegible]

(2) If a me[illegible] ng a minor has been admitted to the benefits of partnership in such firm"† satisfies the *Income-tax Officer* "or other authority appointed by the Governor-General in Council in this behalf"‡ that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been levied on the profits or gains of the firm of that year "or that his *total* income of the previous year was below the minimum chargeable with income-tax"† he shall be entitled to a refund on his share of those profits or gains *calculated at the difference between those rates* "or at the rate at which income-tax has been levied as the case may be."†

* The words within quotations have been substituted by Act 4 of 1924.
† Inserted by Act 18 of 1933. ‡ Inserted by Act 22 of 1930.

(3) If the owner of a security from the interest on which, or any person from whose salary income-tax has been deducted in accordance with the provisions of section 18, satisfies the Income-tax Officer "or other authority appointed by the Governor-General in Council in this behalf"* that the rate of Income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year "or that his total income of the previous year was below the minimum chargeable with income-tax"† he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates "or at the rate at which income-tax has been deducted as the case may be."†

(4) For the purposes of this section, 'total income' includes, in the case of any person not resident in British India all income, profits and gains wherever arising accruing or received, which, if arising, accruing or received in British India, would be included in the computation of total income under section 16

"(5) Nothing in this section shall entitle to any refund any person not resident in British India who is neither a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914, nor a subject of a State in India."‡

General power to make refunds.

48A.† (1) If in any case not provided for by section 48 or by the provisions relating to refunds elsewhere contained in this Act the Income-tax Officer is satisfied, upon claim made in this behalf, that tax has been paid by or on behalf of any person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, the Income-tax Officer shall allow a refund to such person of the amount so paid or so paid in excess.

(2) The Assistant Commissioner in the exercise of his appellate powers, or the commissoner in the exercise of his appellate powers or powers of revision is satisfied to the like effect shall in like manner cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

(3) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief.

Notes—Refund of Indian income-tax is admissible in respect of sums or dividends received by him from sterling companies registered and with their share register in United Kingdom 136 Ind. Cas. 170=33 Bom. L. R. 776=55 B. 734=A. I. R 1931 Bom. 420 Dividends received outside British India from company registered in United Kingdom and assessed in British India are not part of total income for purpose of income-tax assessment. 33 Bom L. R. 776=55 B. 734=136 In l Cas 170. Transferee of profits under Will of deceased partner accruing due before his death is not entitled to refund of income-tax paid in respect of such profits A. I. R. 1932 Sind 18=25 S. L R. 426=136 Ind Cas 819.

Relief in respect of United Kingdom income-tax.

49. (1) If any person who has paid Indian income tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid United Kingdom income-tax for that year in respect of the same part of his income, and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920,§ is less than the Indian rate of tax charged in respect of that

* Inserted by Act 22 of 1930.
† Inserted by Act 18 of 1933.
‡ Inserted by Act 3 of 1928.
§ 10 & 11 Geo. V. Ch. 18.

part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the I dian rate of tax and the rate at which he was entitled to, and obtained, relief under that section :

Provided that the rate at which the refund is to be given shall not exceed one half of the Indian rate of tax.

(2) *In sub-section* (1)—

(*a*) the expression "Indian income-tax" means income tax and super-tax charged *in accordance with the provisions of this Act*;

(*b*) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged ;

(*c*) the expression "United Kingdom income-tax" means income-tax and super tax chargeable in accordance with the provisions of the Income-tax Acts.

*49A. Where under any of the provisions of this Act, a refund is found *to be due to any person*, the *Income-tax Officer*, Assistant Commissioner or Commissioner, as the case may be, may in lieu of, payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

Power to set-off amount of refunds against tax remaining payable.

*49B. Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 or 48A or 49, is unable to receive such refund or to make such *claim, his executor, administrator* or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Power of representative of deceased person or person disabled to make claim on his behalf.

50. No claim to any *refund* of income-tax under this Chapter shall be allowed, unless it is made within one year from the last day of the year in which the tax was recovered "or before the last day of the financial year commencing after the expiry of the previous year, as defined in clause (1) of section 2, in which the income arose on which the tax was recovered, whichever period may expire later" †

Limitation of claims for *refund*.

"Provided that a claim to refund under section 49 may be admitted after

hen the applicant satisfies the Income-tax *specially empowered* that he had sufficient cause for

section mean 'tax was recovered the assessee under the provision

3 M. L. J. (F. B.) 672.

*"50A. (1) Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48 or 48A or 49 or to the amount of the refund made in such case, may appeal to the Assistant Commissioner.

Appeal against refusal of refund.

(2) The appeal shall be presented within thirty days of the date on which the refusal of the refund or the amount of the refund allowed, was communicated to the appellant.

* Inserted by Act 18 of 1933.

† Inserted by Act 22 of 1930.

(3) If the owner of a security from the interest on which, or any person from whose salary income-tax has been deducted in accordance with the provisions of section 18, satisfies the Income-tax Officer "or other authority appointed by the Governor-General in Council in this behalf"* that the rate of Income-tax applicable to his total income of the previous year was less *than the rate at which income-tax has been charged in making such deduction* in that year "or that his total income of the previous year was below the minimum chargeable with income-tax"† he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates "or at the rate at which income-tax has been deducted as the case may be."†

(4) For the purposes of this section, 'total income' includes, in the case of any person not resident in British India all income, profits and gains wherever arising accruing or received, which, if arising, accruing or received in British India, would be included in the computation of total income under section 16

"(5) Nothing in this section shall entitle to any refund any person not resident in British India who is neither a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914, nor a subject of a State in India."‡

General power to make refunds.

48A.† (1) If in any case not provided for by section 48 or by the provisions relating to refunds elsewhere contained in this Act the Income-tax Officer is satisfied, upon claim made in this behalf, that tax has been paid by or on behalf of any person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, the Income-tax Officer shall allow a refund to such person of the amount so paid or so paid in excess.

(2) The Assistant Commissioner in the exercise of his appellate powers, or the commissoner in the exercise of his appellate powers or powers of revision is satisfied to the like effect shall in like manner cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

(3) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief.

Notes—Refund of Indian income-tax is admissible in respect of sums or dividends received by him from sterling companies registered and with their share register in United Kingdom. 136 Ind. Cas. 170=33 Bom. L. R. 776=55 B. 734=A. I. R 1931 Bom. 420 Dividends received outside British India from company registered in United Kingdom and assessed in British India are not part of total income for purpose of income-tax assessment. 33 Bom L. R. 776=55 B. 734=136 Ind Cas 170. Transferee of profits under Will of deceased partner accruing due before his death is not entitled to refund of income-tax paid in respect of such profits A I R 1932 Sind 18=25 S. L R 426=136 Ind Cas 819.

Relief in respect of United Kingdom income-tax.

49. (1) If any person who has paid Indian income tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid United Kingdom income-tax for that year in respect of the same part of his income, and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920,§ is less than the Indian rate of tax charged in respect of that

* Inserted by Act 22 of 1930.
† Inserted by Act 18 of 1933.
‡ Inserted by Act 3 of 1928.
§ 10 & 11 Geo. V. Ch. 18.

part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax and the rate at which he was entitled to, and obtained, relief under that section :

Provided that the rate at which the refund is to be given shall not exceed one half of the Indian rate of tax.

(2) In sub-section (1)—

(*a*) the expression "Indian income-tax" means income tax and super-tax charged in accordance with the provisions of this Act ;

(*b*) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged ,

(*c*) the expression "United Kingdom income-tax" means income tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts.

Power to set-off amount of refunds against tax remaining payable.

*49A. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Assistant Commissioner or Commissioner, as the case may be, may in lieu of, payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

Power of representative of deceased person or person disabled to make claim on his behalf.

*49B. Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 or 48A or 49, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Limitation of claims for refund.

50. No claim to any refund of income-tax under this Chapter shall be allowed, unless it is made within one year from the last day of the year in which the tax was recovered "or before the last day of the financial year commencing after the expiry of the previous year, as defined in clause (11) of section 2, in which the income arose on which the tax was recovered, whichever period may expire later" †

"Provided that a claim to refund under section 49 may be admitted after [illegible] hen the applicant satisfies the [illegible] Income-tax specially empowered [illegible] that he had sufficient cause for [illegible]

[illegible] section mean 'tax was recovered [illegible] the assessee under the provision of s. 27 of the Finance Act of 1920". 50 M. 920=53 M. L. J. (F. B.) 672.

Appeal against refusal of refund.

*"50A. (1) Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48 or 48A or 49 or to the amount of the refund made in such case, may appeal to the A[illegible] Commissioner.

(2) The appeal shall be presented within thirty days of the date [illegible] the refusal of the refund or the amount of the refund allowed, was [illegible] to the appellant.

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* Inserted by Act 18 of 1933. † Inserted by Act [illegible]

(3) The appeal shall be made in the prescribed form and shall be verified in the prescribed manner.

(4) The Assistant Commissioner may, after giving the appellant an opportunity of being heard, pass such orders as he thinks fit."

CHAPTER VIII.

Offences and Penalties.

Failure to make payments or deliver returns or statements or allow inspection.

51. If a person fails without reasonable cause or excuse—

(*a*) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46 ;

(*b*) to furnish a certificate required by sub section (9) of section 18 or by section 20 to be furnished ;

(*c*) to furnish in due time any of the returns mentioned in "section 19A",* "section 20A,"† section 21, section 22 or section 38 ;

(*d*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub section (4) of section 22, such accounts and documents as are referred to in the notice ;

(*e*) to grant inspection or allow copies to be taken in accordance with the provisions of section 39,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

Notes.—*Vide* 15 C. W. N. 906 ; 43 M. 498A ; 40 A. 563 ; 12 A. L. J. 740 ; 119 P. L. R. 1915.

False statement in declaration.

52. If a person makes a statement in a verification mentioned in "section 19A or"* "section 20A"† or "section 22 or subsection (2) of section 26A" ‡ sub section (3) of section 30, or section (2) of section 32 "or sub-section (2) of section 33A"‡ "or sub-section (3) of section 50A"† which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code §

Notes.—A civil Court has no jurisdiction to entertain a suit contesting validity of assessment order. 78 Ind. Cas. 940. Offences under both sections are different. A. I. R 1933 Nag. 358. Where return is not complete, verification of such return does not constitute offence under s. 52. A. I. R. 1933 Nag. 358. Where assessable income is deliberately kept out of return by lawyer and where persists in maintaining false defence, held the punishment should be deterrent. 1933 Cr. C. 1123=A. I. R. 1933 Rang. 292.

Prosecution to be at instance of Assistant Commissioner.

53. (1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the Assistant Commissioner

(2) The Assistant Commissioner may stay any such proceeding or compound any such offence.

Disclosure of information by a public servant.

54. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding, relating

* Inserted by Act 24 of 1926
† Inserted by Act 18 of 1933.
‡ Inserted by Act 21 of 1930.
§ XLV of 1860.

to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872,* no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(1) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extent to six months, and shall also be liable to fine :

Provided that nothing in this section shall apply to the disclosure—

(a) of any such particulars for the purposes of a prosecution under† the Indian Penal Code ‡ in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

(b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

"(cc) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or"§

(d) of such facts, to an authorized officer of the United Kingdom, as may be necessary to enable relief to be given under section 27 of the Finance Act 1920‖ or a refund to be given under section 49 of this Act :

"Provided, further that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 26A, or to the giving of evidence by a public servant in respect thereof"¶ ;

Provided, further, that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

[illegible]

1934 Nag. 181 = 17 Nag. L. J. 63.

CHAPTER IX.

SUPER-TAX.

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any "individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm"** an additional duty

Charge of super-tax.

* I of 1872.
† Certain words repealed by Act XXII of 1930 have been omitted.
‡ XLV of 1860.
§ Inserted by Act 18 of 1933.
‖ 10 & 11 Geo. V. Ch. 18.
¶ Inserted by Act 21 of 1930.
** The words within quotations have been substituted by Act 2 of 1934.

of income tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Indian Legislature :

Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

Notes—Where the assessee formed four private companies and when assessed to super-tax contended that they were family companies of which he was merely a

assessed to super-tax under s. 55. 51 Bom. 372.

56. Subject to the provisions of this Chapter the total income of any "individual, Hindu undivided family, company, unregisterad firm, or other association of individuals" * shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.†

Total income for purposes of super-tax.

Notes—There is no provision in the Indian Income-tax Act for the assessment to income-tax or super-tax of the estate of a deceased person. 31 C. W. N. 630=A. I. R. 1927 Cal. 518.

57. (1) In the case of any "person"* residing out of British India who is a member of a registered firm and whose share of the profits from such firm is liable to super tax, the remaining members of such firm who are resident in British India shall be jointly and severally liable to pay the super-tax due from the non resident member in respect of such share. ‡

Non-resident partners and share-holders.

(2) Where any person pays any tax under the provisions of this section on account of "another person"§ who is residing out of British India credit shall be given therefor in determining the amount of the tax to be payable by any agent of such non-resident "person"§ under the provisions of sections 42 and 43.

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(2) Save as provided in "sub-sections (3A), (3B), (3C), and (3D), of section 18"** section 57, "and section 58H"†† super-tax shall be payable by the assessee direct.

* Inserted by Act II of 1924.
† The proviso added to this section by Act V of 1925 has been omitted by Act 3 of 1928.
‡ Subsections (2) and (3) added by Act 24 of 1926 have been omitted and subsection 4 has been re-numbered as sub-section (2).
§ Words within quotations have been substituted by Act 24 of 1926.
‖ Substituted by Act 18 of 1933.
¶ Proviso and certain figures have been omitted by Act 18 of 1933.
** Inserted by Act 18 of 1933.
†† Inserted by Act XII of 1927.

CHAPTER IXA.*

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS.

Definitions. **58A** In this Chapter unless there is anything repugnant in the subject or context,—

(*a*) a "recognised provident fund" means a provident fund which has been and continues to be recognised by the commissioner, in accordance with the provisions of this Chapter ;

(*b*) an "employer" means—

(*i*) a Hindu undivided family, company firm or other association of individuals or persons, or

(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11, maintaining a provident fund for the benefit of his or its employees ;

(*c*) *an "employee" means an employee participating in a provident fund*, but does not include a personal or domestic servant ;

(*d*) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest ;

(*e*) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund, at any time ;

(*f*) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest ;

(*g*) the "accumulated balance due" to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund ; and

(*h*) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund.

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and Reasons. But the Select Committee had altered the definition of "employer" so as to include bodies such as Chambers of Commerce which are associations of associations and not associations of individuals ; and also in order to include individuals engaged in a business, profession or vocation. The definition of 'employee" has also been altered by the Select Committee so as to exclude personal and domestic servants —*Report of the Select Committee.*

The according and withdrawal of recognition. **58 B.** (1) The Commissioner of Income-tax may accord recognition to any provident fund which, *in his opinion, satisfies the* conditions prescribed in section 58 C and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(2) The Governor General in Cc
Commissioner of Income-tax to refi
fund, or may, at any time, withdraw
fund

hall take effect on such date as the
h any rules the Central Board of
not being later than the last day of
the financial year in which the order is made.

(4) An order withdrawing recognition shall take effect from the day on which it is made.

* Inserted by Act XII of 1929.

(5) An employer objecting to an order of the Commissioner refusing to recognise a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

Notes.—The power of recognition of a Fund and of withdrawal of recognition will vest in the Commissioner of Income-tax. At the same time, powers are reserved to the Governor General in Council to refuse recognition or withdraw recognition even in cases satisfying the requirements of this chapter. These powers, which, it is hoped, will be sparingly used, are intended as a safeguard against abuse. *Statement of Objects and Reasons* Sub clause 5 has been added by the Select Committee providing for an appeal against an order of the Commissioner refusing to recognise a provident fund—*Report of the Select Committee.*

Conditions to be satisfied by a recognised provident fund.

58C. (1) In order that a provident fund may receive and retain recognition it shall satisfy the conditions set out below and any other conditions which the Governor-General in Council may, by rule, prescribe—

(*a*) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India.

(*b*) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.

(*c*) Subject to the provisions of section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.

(*d*) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith, and of no other sums.

(*e*) The fund shall be vested in two or more trustees, "or in the official Trustee"* under a trust which shall not be revocable save with the consent of all the beneficiaries.

(*f*) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof,

(*g*) The accumulated [illegible] ble on the day he ceases to be an e[illegible]

(*h*) Save as provided in clause (*g*) or in accordance with such conditions and restrictions as the Governor-General in Council may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

* Inserted by Act 3 of 1928.

must be satisfied by a fund
Reasons.

of the employees to require
Report of the Select Committee.

ause (g) run as follows :—"The accumulated
payable *to him or to his heirs and executors,* on

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dition is incomplete,
category. We have
may cover all cases of

58D. Subject to any rules which the Governor-General in Council may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (*c*) of sub-section (1) of section 58C—

Power to relax restrictions of employer's contributions in certain cases.

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem ; and

(*b*) so as to permit the crediting by employers to the individual accounts of *employees of periodical bonuses or other contributions of a contingent nature,* where the calculation and payment of such bonuses of other contributions is provided for on definite principles by the regulations of the fund.

Notes.—This section gives power in certain circumstances to the Commissioner of Income-tax to relax in respect of any particular fund two of the conditions laid down in section 58C. *Statement of Objects and Reasons.*

58E. The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him *in that year and shall be included in his* total income for that year, and, subject to the exemptions specified in section 58F, shall be liable to income-tax and super-tax :

Annual accretion deemed to be income received.

Provided that, for the purpose of sub-section (3) of section 15, out of such annual accretion only the employee's own contributions shall be included in his *total income.*

Notes.—This section sets out the accounts to be maintained by the trustees of the fund and also indirectly, by setting the nomenclature, lays down the extent of exemption both in respect of contributions and in respect of interest.—*Statement of Objects and Reasons.*

58F. (*1*) *An employee* shall *not* be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year.

Exemptions of annual accretion *from* income-tax.

(2) In the accounts of a recognised provident fund, the contributions exempted from income-tax under sub-section (1) and accumulations thereof shall be shown separately, and interest thereon shall be calculated and shown separately. Such interest shall be exempt from payment of income-tax, in so far as it is allowed at a rate not exceeding such rate as the Governor-General in Council may, by notification in the *Gazette of India,* fix in this behalf.

58G. "(1)* Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance s be exempt from payment of super-tax exc extent of an amount e al to the ag

Exemptions of accumulated balance from income-tax and super-tax.

* Inserted by Act 18 of 1

(5) An employer objecting to an order of the Commissioner refusing to recognise a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

Notes —The power of recognition of a Fund and of withdrawal of recognition will vest in the Commissioner of Income-tax At the same time, powers are reserved

provident fund—*Report of the Select Committee.*

58C. (1) In order that a provident fund may receive and retain recognition it shall satisfy the conditions set out below and any other conditions which the Governor-General in Council may, by rule, prescribe—

Conditions to be satisfied by a recognised provident fund.

(*a*) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India.

(*b*) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.

(*c*) Subject to the provisions of section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.

(*d*) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith, and of no other sums

(*e*) The fund shall be vested in two or more trustees, "or in the official Trustee"* under a trust which shall not be revocable save with the consent of all the beneficiaries,

(*f*) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

(*g*) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.

[illegible] with such conditions [illegible], by rules, prescribe, no [illegible] be payable to him.

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

* Inserted by Act 3 of 1928.

Notes.—This section sets out the conditions which must be satisfied by a fund before it can be recognised—*Statement of Objects and Reasons.*

Clause (e) —"We consider it to be in the interest of the employees to require that the fund shall be vested in two or more trustees" *Report of the Select Committee.*

Clause (g).—Originally the clause (g) ran as follows:—"The accumulated balance due to an employee shall be payable *to him or to his heirs and executors*, on the day he ceases to be an employee of the employer maintaining the fund." But the words "to him......execu [illegible] for the omission is thus st [illegible] dition is incomplete, and [illegible] category. We have therefore omitted the category entirely in order that the clause may cover all cases of lawful payees". *Report of the Select Committee.*

Power to relax restrictions of employer's contributions in certain cases.

58D. Subject to any rules which the Governor-General in Council may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub-section (1) of section 58C—

(a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem; and

(b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses of other contributions is provided for on definite principles by the regulations of the fund.

Notes.—This section gives power in certain circumstances to the Commissioner of Income-tax to relax in respect of any particular fund two of the conditions laid down in section 58C. *Statement of Objects and Reasons.*

Annual accretion deemed to be income received.

58E. The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund [illegible] him [illegible] total income for that year, and, subject to [illegible] 58F, shall be liable to income-tax and super-tax:

Provided that, for the purpose of sub section (3) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income.

Notes.—This section sets out the accounts to be maintained by the trustees of the fund and also indirectly, by setting the nomenclature, lays down the extent of exemption both in respect of contributions and in respect of interest.—*Statement of Objects and Reasons.*

Exemptions of annual accretion from income-tax.

58F. (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year.

(2) In the accounts of a recognised provident fund, the contributions exempted from [illegible] accumulations thereof shall be shown [illegible] calculated and shown separately. Such [illegible] nt of income-tax, in so far as it is all[illegible] the Governor-General in Council may, [illegible] x in this behalf.

Exemptions of accumulated balance from income-tax and super-tax.

58G. "(1)* Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of

* Inserted by Act 18 of 1933.

the amounts of super-tax on annual accretions that would have been payable under section 58 E up to the first day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933*, had come into force on the 15th March, 1930."

Exemption of accumulated balance from income-tax and super-tax.

(2) Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax† and shall be excluded from the computation of his total income :

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of the employee's ill health, or by the contraction or discontinuance of the employer's business, or other cause beyond the control of the employee.

(3) Where exemption from payment of income-tax is not allowed under the provisions of "sub-section (2)‡ the Income-tax Officer shall calculate the total of the various sums of income-tax from the payment of which the contributions and interest credited to the employee's individual account have been exempted under the provisions of sub-section (1) and (2) of section 58F, and such total shall be payable by the employee, in addition to any other income-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable.

Sections 58F and 58G and Sections 3 and 4.—These are the important substantive sections. The contributions made by the employee will be included in his total income but will be exempt from tax. The annual increment for each year will be disregarded in assessing the employee from year to year. But ... laim rebate of tax on insurance premia ... the condition that the insurance premia ... by him to the provident fund and the ... er do not exceed one sixth of his total income in the year concerned. When the accumulated balance is paid, all sums will be taxed as part of the total income of that year, which are made up of (a) excess contributions, *i. e.*, contributions in excess of one-sixth of salary from year to year or (b) excess interest, *i. e*, interest above a minimum rate on the one-sixth of salary which is exempt and all interest on excess contributions. The accumulated balance will not be exempt in the case of an employee with less than five years' continuous service under the employer unless the employee's service is terminated for reasons beyond his control. *Statement of Objects and Reasons.*

Deduction at source of income-tax payable on accumulated balances due.

58H. The trustees of a recognised provident find or other person authorised by the regulations of the fund to make payment of accumulated balance due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under "sub-section (3) §" of section 58G. and any income-tax and super-tax payable on the employee's total income as determined under sub-section (3) of section 58 J, and sub sections (4) 2 (9) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head 'Salaries'.

... or the necessary machinery for ... es are paid out by trustees, or ... *Reasons.*

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* Act 18 of 1933.

† Omitted by Act 18 of 1933.

‡ Substituted by Act 18 of 1933.

§ Substituted by Act XXIV of 1934.

Accounts of recognised provident funds.

58I. (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe.

Notes.—This section states what accounts are to be kept in cases of recognised provident funds.

Treatment of balances in newly recognised provident funds.

58J. (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund and, such amount (thereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all [illegible] would have been liable to [illegible] the date of the institution of [illegible] ve been paid on any such sum, [illegible] be income received by the employee in the year in which the recognition of the fund takes effect and shall be included in the employee's total income for that year; and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance:

Provided that, in case of serious accounting difficulty, the Commissioner shall have power subject to the said rules, to make a summary calculation of such aggregate.

(4) Notwithstanding anything contained in condition (*h*) of sub section (*i*) of section 58C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub section (3), shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.

[illegible] rights of the persons administering [illegible] ng with it, or with the balance [illegible] re recognition is accorded, in any manner which may be lawful.

[illegible] tlement of transitional problems arising [illegible] existence and leaves detail to be settled

Treatment of fund transferred by employer to trustee.

58K. (1) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his emyloyees and has not transferred the fund or any portion of it, transfer such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall be deemed to be an expenditure by the employer within the meaning of clause (ix) of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

Notes.—This section provides that the deduction from the employer's taxable profits of sums substantially transferred by him to the trustees of his employee's provident funds shall, on the recognition of such fund, be spread over a number of years.—*Statement of Objects and Reasons.*

Provisions relating to rules.

58L. (1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 59.

(2) In addition to any power conferred by this Chapter, the Governor-General in Council may make rules—

(a) prescribing the statements and other information to be submitted with an application for recognition ;

(b) limiting the contributions to a recognised provident fund by employees of a company who are share holders in the company ;

(c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund ;

(d) determining the extent to and the manner in which exemption from payment of income tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn ; and

(e) gener[illegible] secure such further [illegible] and the administration [illegible]

[illegible] eral [illegible] It [illegible] will [illegible]

of Revenue.—*Statement of Objects and Reasons.*

Clause (b).—"In clause (b) of sub-clause (2), we have deleted the word 'private' before the words 'company' as in our opinion there may be cases of share-holders in public companies just as well as in private companies who should properly come [illegible] intention of [illegible] apply only to [illegible] shares of a [illegible]

Application of this Chapter.

58M. This chapter shall not apply to any provident fund to which the Provident Funds Act, 1925, applies.

Notes.—This section makes it clear that funds to which the Provident Funds Act of 1925 applies will not be affected—*Statement of Objects and Reasons.*

CHAPTER X.

MISCELLANEOUS.

Power to make rules.

59. (1) The "Central Board of Revenue"* may, subject to the control of the Governor General in Council, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of British India or for such part thereof as may be specified.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—

(*i*) incomes derived in part from agriculture and in part from business ;

(*ii*) insurance companies ;

(*i* [illegible]

(*b*) [illegible]

(*c*) [illegible]

be necess [illegible]

of the Fin [illegible]

(*d*) prescribe the year which, for the purpose of relief under section 49 is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920†, and

(*e*) provide for any matter which by this Act is to be prescribed.

‡"(3) In cases coming under clause (a) of sub section (2), where the income, profits and gains liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Central Board of Revenue, is unreasonable, the rules made under that sub-section may—

(*a*) prescribe methods by which an estimate of such income, profits and gains may be made, and

(*b*) in cases coming under sub-clause (*i*) of clause (*a*) of sub section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax,

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act".

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(5) Rules made under this section shall be published in the *Gazette of India* and shall thereupon have effect as if enacted in this Act.

Notes.—In calculating the total profits mentioned in rule (2) of the rules passed under old s. 43(2) which corresponds to this section, of a person residing out of British India the assignee is not entitled to have the income-tax and excess profits duties payable in England deducted from it. 44 M. 489=40 M. L. J. 560.

Power to make exemptions, etc.

60. (1) The Governor-General in Council may, by notification in the *Gazette of India*, make an exemption, reduction in rate or other modification, in respect of income tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

‖"(2) When by reason of any portion of an assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than twelve months' § his income is assessed, at a rate higher than that at which it would otherwise have been assessed, the Governor General in Council may grant such relief as he may think fit.")

* Inserted by Act. 4 of 1924.
† 10 & 11 Geo. V, Ch. 18.
‡ Inserted by Act 28 of 1927.
§ Inserted by Act 18 of 1933.
‖ Inserted by Act XXII of 1930.

Appearance by authorised representative.

61. Any assessee, who is entitled or required to attend befare any income-tax authority in connection with any proceedings under this Act, may attend either in person or by any person authorised by him in writing in this behalf.

Receipts to be given.

62. A receipt shall be given for any money paid or recovered under this Act.

Service of notices.

63. (1) A notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.*

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or "to the"† manager. or any adult male member of the family "and in the case of any other association of individuals be addressed to the principal officer thereof."†

member of the firm who made the return but under section 63 (2) it can be served on any member of the firm and such service is good service. 48 M. 602=90 Ind. Cas. 549.

Place of assessment.

64 (1) Where an assessee carries on business at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business is carried on in more places than one, by the Income tax Officer of the area in which his principal place of business is situate.

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more provinces than one, by the Commissioners concerned or if they are not in agreement, by the "Central Board of Revenue "‡

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views.

(4) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

Notes.—The Income-tax Act provides by s. 64 (3) that where the question about the principal place of business is between places in more provinces than one it shall be determined by the commissioners concerned, and that the assessee shall have an opportunity of representing his
set the Commissioner in motion but the
language used is that it is the duty of
clear is that the Income-tax Officer can r
though it had been determined in accordanc
to prejudge the issue he is committing an illegality. 49 A. 616=25 A. L. J. 225=100 Ind Cas. 756=A. I. R. 1927 All. 299. 42 M. 455; 34 M. L. J. 148; 34. M. 257 (P. C); 44 M 773.

Indemnity.

65. Every person

tion, retention or payment thereof.

* V of 1908.

† The words within quotations have been substituted by Act 7 of 1924. Inserted ... 1 of 1924.

‡ ...e words within quotations have been substituted by Act 4 of 1924.

Statement of case by Commissioner to High Court.

66. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VIII, a question of law arises, the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

(2) "Within sixty days of the date on which he is served with notice of an order under section 31 or section 32"* "or of an order under section 33 enhancing an assessment or otherwise prejudical to him"† "or of a decision by a Board of Referees under section 33A"‡ the assessee in respect of whom the order "or decision"‡ was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order "or decision"‡ and the Commissioner shall, within "sixty days"* of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court :

"Provided that a reference shall lie from an order under section 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 31 or section 32, revised by the order under section 33".†

Provided "further"† that, if, in exercise of his power of "revision"§ under section 33, the Commissioner decides the question "or if the Commissioner rejects the application on the ground that it is time-barred or otherwise incompetent, or, if, in exercise of his powers under sub-section (3), the Commissioner refuses to state the case"† the assessee may "within thirty days from the date on which he receives notice of the order passed by the Commissioner"† withdraw his application, and if he does so, the fee paid shall be refunded.

(3) If, on any application being made under sub section (2) the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may "within [illegible] erved with notice of the refusal"‖ app [illegible] Court if it is not satisfied of the [illegible] may require the Commissioner to state the case and to refer it, and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.

[illegible] sub-section (2), the [illegible] the assessee may, [illegible] notice of the order of the Commissioner, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to treat the application as made within the time allowed under sub section (2)".

(4) If the High Court, is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court, upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the

* Substituted by Act XX of 1930.
† Inserted by Act 18 of 1933.
‡ Inserted by Act 21 of 1930.
§ Substituted by Act 3 of 1928.
‖ The words within quotations have been added by Act 14 of

Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from *any income-tax authority subordinate to him, shall forward a copy of such* judgment to such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an *assessee, the costs shall be in the discretion of the Court.*

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case :

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

"(7A) Section 5 of the Indian Limitation Act, shall apply to an application to the High Court by an assessee under sub section (3) or sub-section (3A)" *

"(8) For the purposes of the section 'the High Court' means—

(*a*) in relation to the North West Frontier Province and British Baluchistan the High Court of Judicature at Lahore ;

(*b*) in relation to the Province of Ajmir Merwara, the High Court of Judicature at Allahabad ; and

(*c*) in relation to the Province of Coorg, the High Court of Judicature at Madras."†

Notes.—See 44 M 718 ; 23 Bom. L. R. 1267 ; 45 B. 1064 ; 45 B. 881 ; 48 C. 161 ; 43 A 139 ; 45 B. 1286 ; 31 M. L. J. 698 ; 44 M 718 ; 1927 M. W. N. 591 ; 104 Ind. Cas. 841 ; 104 Ind Cas 336 ; 103 Ind. Cas. 522 (1) ; 100 Ind. Cas. 774 ; 6 Pat. 29= 100 Ind. Cas. 897 ; 49 A. 616=25 A. L J. 225 ; 105 Ind. Cas 556 ; A. I. R. 1927 Mad. 546 ; 103 Ind. Cas. 38 ; 101 Ind. Cas. 127 ; 105 Ind. Cas. 167 ; 53 M. L J. 819=54 I A 421 ; 100 Ind. Cas. I 92 Ind. Cas. 257 ; 28 Bom. L. R. 1096 ; 30 C. W. N. 831 ; 92 Ind. Cas. 249 ; 28 Bom L R. 1096 ; 30 C. W. N 831 ; 96 Ind. Cas. 382 ; 94 Ind. Cas 128 ; 91 Ind. Cas. 980 ; 21 N. L R 175 ; 85 Ind. Cas. 520 ; 90 Ind. Cas. 1018 ; 86 Ind. Cas. 170 ; 85 Ind. Cas. 520 ; 84 Ind. Cas. 521 ; A. I. R. 1924 Pat. 73 ; 84 Ind. Cas 792 ; 61 I A. 318=58 B. 579 ; 30 N. L. R. 340=A. I. R. 1934 Nag. 175 ; 61 I A. 1=56 A 1 ; A. I R 1934 Lah. 1013 ; A. I. R. 1934 Lah. 983 ; A. I. R. 1934 Lah. 977 ; 56 A. 504 ; 58 B. 361, 28 S L. R. 174.

Costs.—48 C. 756 ; 18 B. 474 ; 43 M. 75 ; 44 M. 65 ; 44 M. 489 ; 44 M. 768 ; 44 M. 773 ; 15 L. W. 496 ; 45 B. 1286 ; 45 B. 1177 ; 29 B. 233.

Appeal.—23 Bom. L. R. 1102.

References to be heard by Benches of High Courts, and appeal to lie in certain cases to Privy Council.

"*66A. (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in [illegible]

[illegible] *tained in the Letters Patent of any High Court established by Letters Patent or* [illegible]

[illegible] ouncil from any judgment of the [illegible] section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this sub-section shall be deemed to affect the pro-[illegible]ons of sub-section (5) or sub-section (7) of section 66 :

[illegible]erted by Act 18 of 1933. † Inserted by Act 24 of 1926.

Provided, further that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded thereby transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (5) and (7) of section 66 in the case of a judgment of the High Court.

(5) Nothing in this section shall be deemed—

(*a*) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or,

(*b*) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee."*

Bar of suits in Civil Court.

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done or intended to be done under this Act.

Computation of periods of limitation.

67A.* In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be "excluded."†

Notes—This section is not *ultra vires*. A. I. R. 1928 Rang. 70.

Cases.—*Vide* 42 C. 151 ; 62 Ind. Cas. 394 ; 26 C. W. N. 506 ; 17 C. 5?? ; 44 M 768 ; 35 M. L. J. 23 ; 45 B. 881 ; 45 B. 1064.

68. *Repealed by Act 12 of 1927.*

SCHEDULE I.

Repealed by Act 12 of 1927.

THE INDEMNITY ACT, 1919.

ACT NO. XXVII OF 1919.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 25TH SEPTEMBER, 1919.

An Act to indemnify officers of Govenment and other persons in respect of certain acts done under martial law, and to provide for other matters in connection therewith.

WHEREAS owing to the recent disorders in certain districts in the Punjab and in other parts of India, martial law has been enforced ; and

WHEREAS it is expedient to indemnify officers of Government and other persons in respect of acts, matters and things ordered or done or purporting to have been ordered or done for the purpose of maintaining or restoring order, provided that such acts, matters or things were ordered or done in good faith and in a reasonable belief that they were necessary for the said purpose;

WHEREAS certain persons have been convicted by Courts and ... constituted or appointed under martial law, and it is expedient ... y. and provide for the continuance of certain sentences passed by ... ble authorities ; It is hereby enacted as follows :— ... m

* Inserted by Act 24 of 1926. † Inserted by Act

Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any income-tax authority subordinate to him, shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case:

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

"(7A) Section 5 of the Indian Limitation Act, shall apply to an application to the High Court by an assessee under sub section (3) or sub section (3A)" *

"(8) For the purposes of the section 'the High Court' means—

(*a*) in relation to the North West Frontier Province and British Baluchistan the High Court of Judicature at Lahore;

(*b*) in relation to the Province of Ajmir Merwara, the High Court of Judicature at Allahabad; and

(*c*) in relation to the Province of Coorg, the High Court of Judicature at Madras."†

Notes—See 44 M. 718; 23 Bom. L. R. 1267; 45 B. 1064; 45 B. 881; 48 C. 161; 43 A 139; 45 B. 1286; 31 M L. J. 698; 44 M 718; 1927 M. W. N. 591; 104 Ind. Cas. 841; 104 Ind Cas 336; 103 Ind. Cas. 522 (1); 100 Ind. Cas. 774; 6 Pat. 29= 100 Ind. Cas. 897; 49 A. 616=25 A. L J. 225; 105 Ind. Cas 556; A. I. R. 1927 Mad. 546; 103 Ind. Cas. 38; 101 Ind. Cas 127; 105 Ind. Cas. 167; 53 M. L. J. 819=54 I A 421; 100 Ind. Cas. I 92 Ind. Cas. 257; 28 Bom. L. R. 1096; 30 C. W. N. 831; 92 Ind. Cas. 240; 28 Bom L R. 1096; 30 C. W. N. 831; 96 Ind. Cas 382; 94 Ind. Cas 128; 91 Ind. Cas. 980; 21 N. L R 175; 85 Ind. Cas. 520; 90 Ind. Cas. 1018; 86 Ind. Cas. 170; 85 Ind. Cas. 520; 84. Ind. Cas. 521; A. I. R. 1924 Pat. 73; 84 Ind. Cas 792; 61 I A. 318=58 B 579; 30 N. L. R. 340=A. I. R. 1934 Nag. 175; 61 I A. 1=56 A 1; A. I R 1934 Lah. 1013; A. I. R. 1934 Lah. 983; A. I. R. 1934 Lah. 977; 56 A. 504; 58 B. 361, 28 S L. R. 174.

Costs.—48 C. 756; 18 B. 474; 43 M. 75; 44 M. 65; 44 M. 489; 44 M. 768; 44 M. 773; 15 L. W. 496; 45 B. 1286; 45 B. 1177; 29 B. 233.

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"***66A.** (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two J respect of such of the Code of far as may be, tained in the Letters Patent of any High Court established by Letters Patent or in any ot

References to be heard by Benches of High Courts, and appeal to lie in certain cases *to Privy Council.*

(2) Council from any judgment of the High Co der section 66 in any case which the High Court certifies to be a fit one for appeal to *His Majesty in Council.*

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the pro-ons of sub-section (5) or sub-section (7) of section 66:

*erted by Act 18 of 1933. † Inserted by Act 24 of 1926.

Provided, further that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded thereby transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (5) and (7) of section 66 in the case of a judgment of the High C urt.

(5) Nothing in this section shall be deemed—

(*a*) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or,

(*b*) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Commitee."*

Bar of suits in Civil Court.

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done or intended to be done under this Act.

Computation of periods of limitation.

67A.* In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be "excluded."†

Notes.—This section is not *ultra vires*. A. I. R. 1928 Rang. 70.

Cases.—*Vide* 42 C 151 ; 62 Ind. Cas 394 ; 26 C. W. N. 506, 17 C. 599 (P. C); 44 M 768, 35 M. L. J. 23 ; 45 B. 881 ; 45 B. 1064.

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SCHEDULE I.

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THE INDEMNITY ACT, 1919.

ACT NO. XXVII OF 1919.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 25TH SEPTEMBER, 1919.

An Act to indemnify officers of Govenment and other persons in respect of certain acts done under martial law, and to provide for other matters in connection therewith.

WHEREAS owing to the recent disorders in certain districts in the Punjab and in other parts of India, martial law has been enforced ; and

WHEREAS it is expedient to indemnify officers of Government and other persons in respect of acts, matters and things ordered or done or purporting to have been ordered or done for the purpose of maintaining or restoring order, provided that such acts, matters or things were ordered or done in good faith and in a reasonable belief that they were necessary for the said purposes ; and

by Courts and other authorities ...nd it is expedient to confirm ...nces passed by such Courts or

... ; it is hereby enacted as follows :

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* Inserted by Act 24 of 1926 † Inserted by Act 22 of

Notes —The object of this Bill is to idemnify officers of Government and other persons for acts done *bonafide* in the course of martial law during the recent disorders and to provide for the continuance of the sentences passed by Courts established under martial law. Such legislation is inevitable after a period of martial law, which is in its nature an extra legal proceeding. If officers are called on to discharge onerous and difficult duties in a time of emergency, they are to receive reasonable protection. The Bill goes no further than to effect this purpose. It gives protection only to acts done in good faith and in a reasonable belief that they were necessary for the purpose of restoring or maintaining order. It thus leaves open the questions of fact in any given case to be considered nothing to prejudice the committee's take upon its report. Again while y summary Courts established under martial law, the Bill does not affect appeals to the Privy Council from such sentences nor does it relate at all to sentences passed or appointed under the Martial Law Ordinance 19 the payment of compensation in respect of prop *Statement of Objects and Reasons.*

Short title.

1. This Act may be called The Indemnity Act, 1919.

Indemnity of Government officer and other person for certain acts

2. No suit or other legal proceedings whatsoever, whether civil or criminal, shall lie in any Court of law against any officer of Government, whether civil or military, or against any other person acting under the orders of any such officer for or on account of or inr espect of any act, matter or thing ordered or done or purporting to have been ordered or done for the purpose of maintaining or restoring order in any part of British India where martial law was enforced, on or after the 30th of March, 1919, and before the 26th of August, 1919, by any such officer or person : Provided that such officer or person has acted in good faith and in a reasonable belief that his action was necessary for the said purposes ;

and if any such proceeding has been instituted before the passing of this Act it is heredy discharged.

Notes.—In *Phillips* v. *Eyre*, L. R. 4 Q.B. 225 ; 6 Q. B. 1, and action for assault and imprisonment was brought before the Queen's Bench against the Governor of Jamaica, who upon the outbreak of a rebellion in Jamaica had proclaimed martial law and taken various measures for the suppression of the rebellion, in the course of which the acts were committed for which this action was brought. The defendant in one of his pleas alleged that the grievances complained of were covered by an act of Indemnity which had been passed in 1866 by the Jamaica Legislature and that the action therefore could not be maintained. To this the plaintiff replied that the defendant was still Governor at the passing of the Act of Indemnity, which could, therefore, only have become law by his consent. It was also urged in argument that an Act of the Jamaica Legislature could not bar the plaintiff's right to maintain an action in England. *Held* (1) that the Governor of a Colony can legally give his consent to a bill in which he is personally interested ; (2) that the Acts of a Colonial Legislature must be treated in accordance with the principles of the comity of nations, that consequently where by the Colonial Law an act complained of is lawful, such act, though it would have been wrongful if committed here, cannot be made the ground of an action in an English Court, and that the same reasoning applies where an act is afterwards legalised by a Colonial Statute.

Rules of evidence.

3. For the purposes of section 2 a certificate of a Secretary to Government that any act was done under the orders of an officer of Government shall be conclusive proof thereof, and all action taken for the aforesaid purposes shall be deemed to have been taken in good faith and in a reasonable belief that it was necessary therefor unless the contrary is proved.

Notes.—"The only principle on which the law of England tolerates martial law." said the Law Officers of the Crown in 1838, "is necessity ; its introduction can be

justified only by necessity ; and if it survives the necessity on which alone it rests, for a single moment, it becomes instantly a mere exercise of lawless violence "

Confirmation and continuance of martial law sentences.

4. Every person confined under and by virtue of any sentence passed by a Court or other authority constituted or appointed under martial law and acting in a judicial capacity shall be deemed to have been lawfully confined and shall continue liable to confinement until the expiration of such sentence, or until released by the Governor-General in Council or otherwise discharged by lawful authority.

on of the fundamental principle of
f of his common law rights except by
hed principle of law. The true rule
authorities or other persons, and all
are examinable and may be reviewed
y when a state of war is over, but
s are shown to be necessary, naturally
Courts to determine whether they are
fact that Acts of Indemnity are usually
na fide. But such acts do not usually
ommitted *mala fide*. *Wright v. Fitzgerald*, 27 St. Tr. 765—*Thomas and Ballot Leading Cases in Constitutional Law*, p. 132.

Compensation in respect of loss attributable to certain acts.

5. Where under martial law the property of any person has been taken or used by any officer of Government, whether civil or military, the Governor General in Council shall pay to such person reasonable compensation for any loss immediately attributable to such taking or using, to be assessed upon failure of agreement by a person holding judicial office not inferior to that of a District Judge to be appointed by the Government in this behalf.

Notes—Just as these Courts martial are not real Courts, so the law administered by them is not real law. "Martial law," said the *Duke of Wellington*, "is neither more nor less than the will of the General who commands the army, in fact no law at all." Thus, for any trespass to person or property the wrong-doer may,
as soon as they are re-
ental principle of English
rights except by Act of
. gives adequate relief to
parte Marais (1902) A. C. 109, however, *Lord Halsbury L. C.* observed : 'Where actual war is raging, acts done by the military authorities are not justifiable by the ordinary tribunals. No doubt has ever existed that where war actually prevails the ordinary Courts have no jurisdiction over the action of the military authorities." But this decision has been hotly contested. *Vide Heddon v Evans*, (1919) 35 T. L. R. 642 ; *Egan v. Macready*, (1921) 1 Ir. R. 265 ; *Ex parte Milligan*, 4 Wall. 2.

Savings.

6. Nothing in this Act shall—

(*a*) apply to any sentence passed or punishment inflicted by or under the orders of any Commission appointed under the Martial Law Ordinance, 1919.

(*b*) be deemed to bar a full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council or to affect any question or matter to be decided therein, or

(*c*) prevent the institution of proceedings by or on behalf of the Government against any person in repect of any matter whatsoever.

THE INTEREST ACT, 1839.

ACT NO. XXXII OF 1839.

PASSED ON THE 30TH DECEMBER, 1839.

An Act concerning the allowance of Interest in certain cases.

Preamble.

WHEREAS it is expedient to extend to the territories under the Government of the East India Company, as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of the Statute 3rd and 4th William IV, Chapter 42, section 28, concerning the allowance of interest in certain cases;

Power of Court to allow interest.

1. It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then

in writing, so as

be claimed from

that interest shall be payable in all cases in which it is now payable by law.

Notes.—This Act does not affect claims to interest on balances of rent—*M. Kashipreea* v. *Baloram Baboo*, 7 Sel. Rep. 556. This Act is inapplicable to claims for recovery of revenue paid to Government.—*W. Macpherson* v. *K. G. A. T.*

239; 17 W. B. 172;

to pay interest, interest

y the Interest Act and

cent. interest by way

1 B. 354; 22 C. W. N.

ipulation as to the date

been no demand made for interest, interest cannot be awarded under the Act. 101 Ind. Cas. 56=A. I. R. 1927 All. 444. It is clear that neither under the common law nor under the Indian Contract Act can interest be claimed upon a debt unless there has been either an express promise to pay interest or such promise is to be implied from the usage of trade or other circumstances.

644. To

152 Ind.

ompetent

equity justice and good conscience. 35

1934 All.

ere interest is not demanded it cannot

Mad., 1279. Claim for interest in the

upon service of written notice under

245. See also 25 Ind. Cas. 61=1923

e of goods sold in the absence of a

written demand is made intimating that

83 Ind. Cas 268=A. I. R. 1925 Nag. 204. Under this Act only the Court which adjudicates as to the actual debt or claim can award interest. 53 C. 735=98 Ind. Cas. 238=1926 A. I. R. Cal. 119. Where the vendee under a sale deed agreed to pay a certain sum to the vendor

in case the latter gave him a registered receipt the vendee must tender the money before the vendor could be brought under an obligation to give a receipt and his not having done so, the vendor is entitled to interest at the current rate L. R. 3A 163. Interest not payable under the terms of the contract could only be awarded under the Act. 40 M. L. J. 18=1920 M. W. N. 717. Where there is no security a rate of one per cent. per mensem is not unreasonable. 52 Ind. Cas. 953. Interest pending suit is not claimable. 60 Ind. Cas. 288. Where notice as to interest was not given as required under S. 1, interest is to be disallowed. A. I R. 1933 Lah. 212; see also A. I. R. 1933 Oudh. 259=10 O. W. N. 316; A I. R. 1933 Mad. 320=64 M. L. J. 130=1933 M. W. N. 157=56 M. 391 Wife claiming dower is in position of ordinary creditor and can claim interest. A. I. R. 1931 All. 403=1931 A. L J. 197. Interest can be allowed if conditions prescribed are satisfied. A. I. R. 1933 Mad. 729=65 M. L J. 620=145 Ind. Cas. 721. In a proper case interest by way of damages can be allowed. 146 Ind. Cas. 154=A. I. R 1933 Lah. 556.

Under this Act Court has power to grant interest on mortgage money, as it is money payable at certain time, and under a written instrument—21 Cal. 274. Where there is no provision for payment of *post diem* interest, it should be paid under this Act—18 Mad. 248. See also 17 A. 581. As to interest on mesne-profits referring to the proviso at the end of Act XXXII of 1839, and to the resolution of the Sudder Court in 1850 the Privy Council awarded interest upon the mesne profits from the commencement of suit to
Cal. 882=4 C. L. R. 60; 6 C. L. I
1839 by way of damages on the ground
but where there is no hand to rece...
also 7 Bom. L.
—4 W. R. (P.
governed by this
ill is a notice.
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This Act does
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8 C. W. N.
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n, (c) that
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C. W. N.
rds Court's
W. N. 437
18 M. 331.
lu Law that
been made
L. R. 439.
ourt before
which such debts or sums certain may be recovered" only specify the Courts which have *jurisdiction to entertain suit for interest.* 134 Ind. Cas 1028=32 P. L. R. 556=A. I. R. 1931 Lah. 457.

Interest Act does not apply to suits to enforce foreign judgment. 75 P. R. 1909. *Rugga* silent, as to interest—No notice claiming interest—Right to interest. 39 P. R.

at a certain time or otherwise. It has no application to an unascertained sum claimed as the profits of a trade. 42 M. 661. See also 51 M. L. J. 633=1926 M. W. N. 957; 47 M. L. J. 312. Interest by way of damages is not recoverable for the mere wrongful detention of an ordinary debt. 4 Ind. Cas. 73

THE JUDICIAL OFFICERS' PROTECTION ACT, 1850.

ACT NO. XVIII OF 1850.

PASSED ON THE 4TH APRIL, 1850.

An Act for the protection of Judicial Officers.

Preamble.

FOR the greater protection of Magistrates and others acting judicially; It is enacted as follows:—

Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

1. No Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the Act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other 'person acting judicially' shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

Notes—A Judge is privileged in respect of any words, relevant to the issue, uttered by him, while acting judicially, in a case within his jurisdiction, although such words convey an imputation upon a person not judicially before him. To maintain an action of slander, the irrelevency must be so gross as to afford no room for the hypothesis of honest mistake.

nity in his office as a Judge of one of the
letters which a Session Judge is dir
Judicial proceedings, and are entitled
in open Court. Evidence which migh
may in the absence of such a ple
writing a privileged communication
malice is traversed *Ally Kurim*
1850 where an act done or ordered
of his judicial duties is within the lim
not he has discharged those d
without believing in good faith
of. Where the act done or o
without the limits of the officer'
or ordering it he in good faith be
12 All. 115. The word jurisdi
by the Privy Council in *Calder*
matter and not authority or powe
But where the belief is not *bonafi*
did not proceed under certain Ac
would have justified him in doin
is not protected from liability
Cal. 311=9 I. A. 152 The me
VII of 1880 (Bengal) which la
functions shall be deemed to be a person ...
XVIII of 1850" is, that for the purpose of protecting him from personal liability his action is to be regarded as judicial. 13 Cal. 208. The conduct of a malicious Judge can be investigated and due punishment can be awarded. 7 Bom. L. R. 951; see also 9 C. W. N. 495=1 C. L. J. 355; 3 B. H. C. App. 1. The mere absence of *malafides* is no defence. 13 W. R. 13; 16 W. R. 63. A magistrate is not protected when he failed to act reasonably, carefully and circumspectly. 3 B. H. A. C. 36. When he acts without jurisdiction believing he has jurisdiction he is protected. 16 M. L. J. 232; see also L. B. R. (1872-1892) 83; 11 W. R. Cr. 19; 8 C. L. J. 75; 30 B. 241; 59 P. W. R. 1908; 9 Ind. Cas. 535. Malicious acts of judicial officer are protected when he acts within jurisdiction. A. I. R. 1933 All. 749.

[illegible] nce executive and judicial. If [illegible] capacity he cannot rely on [illegible] of holding a search. 56 C. 433=11 C. W. N. 458. Where a magistrate acting in his judicial capacity, takes in good faith all the proceedings which the law permits him to take, he is protected. 9 Ind. Cas. 535. A magistrate who makes a personal search of a house in view of an enquiry under the Criminal Procedure Code, acts in the discharge of his judicial functions and may therefore claim the protection of Act XVIII of 1850. 39 C. 453 [illegible] Act is wide enough to grant protection [illegible] 131 Ind. Cas. 675=1931 A. L. J. 41= [illegible] d. Cas 225=8 O. W. N. 116=6 Luck [illegible]

THE KAZIS ACT, 1880.

ACT No. XII OF 1880.

RECEIVED THE G-G'S ASSENT ON THE 9TH JULY, 1880.

An Act for the appointment of persons to the Office of Kazi.

WHEREAS by the preamble to Act No. XI of 1864* (*An Act to repeal the law relating to the offices of Hindu and Muhammadan Law officers and to the offices of Kazi-ul-Kazzat and of Kazi, and to abolish the former offices*), it was (among other things) declared that it was inexpedient that the appointment of the Kazi-ul Kazaat, or of City, Town or Pargana Kazis, should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas by the usage of the Muhammadan community in some parts of British India the presence of Kazis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kazi; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Kazis Act, 1880.†

Local extent.

It extends, in the first instance, only to the territories administered by the Governor of Fort Saint George in Council. But any other Local Government may from time to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration.‡

* Repealed by Act VIII of 1868.

† Certain words after this repealed by Act 10 of 1914 have been omitted.

‡ Act XII of 1880 has been extended to the following places:—

In the Bombay Presidency—*See* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 251.

The Province of Sindh.—*See Bombay Government Gazette*, Dec. 20, 1883, Pt. I., p. 1002.

In the Lower Provinces, the Districts of Buckergunge, Bogra Chittagong, Dacca, Dinagepore, Furreedpore, Jessore Mymensingh, Noakhally, Nuddea, Rajshaye, Rungpore, Pubna, and Tipperah—*See Calcutta Gazette*, June 4, 1884, Pt. I. p. 660 and 940

In the Punjab, the Amritsar, Lahore and Rawalpindi Divisions, the trans. Indus portion of the Dera Ismail Khan District, and the District of Dera Ghazi Khan—*See Punjab Gazette*, 1882 Pt. I. p. 106. and March 15, 1883, Pt. I. [illegible]

In [illegible] es Manual, Ed. 1897, p. 154.

In [illegible] am Manual of Local Rules [illegible]

In [illegible] l Provinces List of Local [illegible]

It [illegible], parganas and other small areas in the Bombay Presidency, the North-Western Provinces and Oudh

Power to appoint Kazis for any local area.

2. Whenever it appears to the Local Government that any considerable number of the Muhammadans resident in any local area desire that one or more Kazis should be appointed for such local area, the Local Government may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kazis for such local area.

If any question arises whether any person has been rightly appointed Kazi under this section, the decision thereof by the Local Government shall be conclusive.

The Local Government may, if it thinks fit, suspend or remove any Kazi appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged, from the office, or who refuses or becomes in the opinion of the Local Government unfit, or personally incapable, to discharge the duties of the office.

Naib Kazis.

3. Any Kazi appointed under this Act may appoint one or more persons as his naib or naibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any naib so appointed.

When any Kazi is suspended or removed under section 2, his naib or naibs (if any) shall be deemed to be suspended or removed, as the case may be.

Nothing in Act to confer judicial or administrative powers; or

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

(a) to confer any judicial or administrative powers on any Kazi or Naib Kazi appointed hereunder; or

to render the presence of Kazi necessary; or

(b) to render the presence of a Kazi or Naib Kazi necessary at the celebration of any marriage or the performance of any rite or ceremony; or

to prevent any one acting as Kazi

(c) to prevent any person discharging any of the functions of a Kazi.

END OF VOL. I.